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I N D E X.

ACCORD AND SATISFACTION.

1. Agreement with third person to take less than demand, good. *Babcock v. Dill*, 185.
2. Payment of less by third person and acceptance by creditor, may be pleaded by debtor in satisfaction of entire demand. *Id.*
3. How rescinded, for fraudulent representations. *Id.*
4. Effect of payment of note given to induce creditors to sign compromise. *Id.*
5. Between building association and withdrawing stockholder. *Miller v. Building Assoc.*, 376.

ACCOUNT RENDER. See ASSUMPSIT, 9.

1. Auditor's report in, final, except in case of misconduct. *Stewart v. Bowen*, 180.
2. Reference back and power to rehear. *Id.*

ACTION. See ARBITRATION, 2; CORPORATION, 5, 14; EXECUTORS AND ADMINISTRATORS; INTERNATIONAL LAW, 1; LAND; MILITARY SERVICE, 1; MUNICIPAL CORPORATION, 1-4; NUISANCE; SHIPPING, 4; SUNDAY.

1. When maintainable by some without joining all parties to written agreement. *Railroad Co. v. Titus*, 184.
2. If damage result from joint action of several parties not acting in combination, may have action against one, without joining all. *Wheeler v. City*, 575.
3. The objection of non-joinder goes only to the damages. *Id.*
4. Under oral agreement for exchange of lands, action should be for price or value against party failing to convey. *Basford v. Pearson*, 125. *Smith v. Hatch*, 698.
5. Properly brought by the name by which plaintiff was generally known, though changed in infancy. *Cooper v. Burr*, 572.
6. Supplemental complaint to revive action in New York is matter of right. *Roach v. La Farge*, 191.

ACTS OF CONGRESS.

- 1789, Sect. 14 of Judiciary Act, 158.
1799, March 2d, Sect. 103. See CUSTOMS, 7.
1850, July 29th. See EXECUTION, 15.
1856, August 18th. See DISCOVERY, TITLE BY.
1860, March 3d. See HABEAS CORPUS.
1862, February 25th. See CONSTITUTIONAL LAW, 11.
1862, July 1st. See STAMP, 3.
1862, ch. 119, sect. 110. See STAMP, 5.
1862, July 7th. See PRIZE, 3.

ACTS OF CONGRESS.

- 1863, February 25th. See **BANKS**, 3.
- 1863, March 3d. See **CUSTOMS**, 1-3.
- 1863, March 3d. See **APPEAL**, 1.
- 1863, March 3d, sect. 16. See **STAMP**, 4.
- 1864, June 3d. See **CONSTITUTIONAL LAW**, 2, 3.
- 1864, June 4th. See **BANKS**, 3.
- 1864, June 30th. See **CUSTOMS**, 5.
- 1864, July 4th. See **CONSTITUTIONAL LAW**, 10.
- 1865, January 24th. See **COURTS**, 11.
- 1865, March 3d. See **BROKERS**.

ADMINISTRATOR. See **EXECUTOR**.**ADMIRALTY.**

1. No jurisdiction where damage done wholly on land though originating on water. *The Plymouth*, 503.
2. A contract of affreightment to be performed upon tidal waters or navigable rivers wholly within the limits of a state, is a maritime contract within the admiralty jurisdiction of the courts of the United States. *Owners of Mary Washington v. Ayres*, 692.
3. A libel for review, filed after the term has passed at which the decree complained of was rendered, and after the same has been executed, will be entertained by a court of admiralty, when actual fraud is charged and the libellant is without fault and without remedy. *North Western Iron Co. v. Hopkins*, 44.

AFFREIGHTMENT. See **ADMIRALTY**, 2; **SHIPPING**, 10.**AGENT.** See **ASSUMPSIT**, 8; **BANKS**, 1; **COMMISSIONS**; **NOTARY PUBLIC**; **TRIAL**, 3; **TRUSTS**, 6.

1. Agent becoming personally liable, does not change relation of principal and agent. *Dow v. Worthen*, 248.
2. Liability, when contracts to pay personally. *Whitcomb v. Kephart*, 440.
3. Person receiving money or credit, and cognisant of disregard of instructions by agent, in application of payment, liable to principal. *Reynolds v. Kenyon*, 181.
4. Person putting agent in position to perpetrate fraud, liable for loss. *Id.*
5. Receiving money on trust and wholly neglecting duty, converts it, is liable in tort, or money had and received. *Reeside v. Reeside*, 247.
6. Earns commissions, when he finds a purchaser at the price, though sale never completed, from defect of title and without his fault. *Doty v. Miller*, 120.

AGREEMENT. See **ACTION**, 1.**AMENDMENT.**

Under the Practice Act of California a complaint cannot be amended in the Supreme Court so as to make it correspond with the verdict. The District Court, in a proper case, before judgment, may direct the complaint to be so amended. *Hooper v. Wells*, 17.

APPEALS.

1. Supreme Court of U. S. cannot entertain appeals from the Court of Claims. Act of Congress March 3d 1863, c. 92, providing for such appeals, is unconstitutional. *Gordon v. The U. S.*, 111.
2. Withdrawal of appeal allowed, upon settlement made in good faith with appellant, in ignorance of the interests of others therein. *Lake's Appeal*, 62.
3. In probate cases, in Michigan, to the Supreme Court. *Jackson v. Hosmer*, 249.

APPLICATION OF PAYMENTS, 193, 257.**ARBITRATION AND AWARD.** See **JUDGMENT**, 3; **STAMP**, 6.

1. Where two parties to a contract agree to refer any matter of dispute that may arise to a third party, whose decision is to be final, and they waive their

ARBITRATION AND AWARD.

right of action at law, they are bound by the decision of such umpire without regard to mistake or fraud on his part. *Leech v. Caldwell*, 280.

2. The remedy for fraud is an action against the guilty agent, not an action on the contract. *Id.*

3. The furthest that the rule has been relaxed in Pennsylvania is to allow one party to come into a court of law when the other has refused to join in the choice of arbitrators, or has prevented the chosen umpire from acting as such. *Id.*

ARKANSAS.

New constitution of, does not protect judgment by court under rebel state government. *Filkins v. Hawkins*, 161

ASSAULT AND BATTERY. See **CRIMINAL LAW**, II.**ASSESSMENT.** See **MUNICIPAL CORPORATION**, 15, 16.**ASSIGNMENT.** See **DEBTOR AND CREDITOR**; **FOREIGN ATTACHMENT**, 1.**ASSOCIATION.**

Legal existence lost by non-user of functions. *Strickland v. Prichard*, 504.

ASSUMPSIT. See **AGENT**, 5; **CORPORATIONS**, 1.

1. Law implies contract to pay for services if relationship does not rebut the presumption. *Gardner's Adm. v. Heffley*, 56.

2. Niece may recover. *Id.*

3. Evidence and proof in such cases. *Id.*, 57.

4. Relationship of father-in-law and son-in-law not in itself sufficient to rebut implied promise for services—what facts will. *Amey's Appeal*, 121.

5. Liability of sheriff's vendee of interest in mill-dam for repairs, under agreement between former owners. *Campbell v. Hand*, 181.

6. Use of dam raises implied promise to pay for repairs. *Id.*

7. Will lie upon the special promise, where a duty arises out of an implied undertaking to do an act requiring skill or fidelity. *Reeside v. Reeside*, 247.

8. Will not lie against agent for balance of moneys, to be laid out in special manner, where trust has actually commenced. *Id.*

9. When assumpsit is the proper action, when account render. *Id.*

10. One journeying with lunatic at former guardian's request may recover proper and reasonable expenses. *Kendall v. May*, 319.

11. Evidence of value of services in such case. *Id.*

12. Lies, where contract void by statute has been fully performed and performance accepted. *Bartlett v. Wheeler*, 441.

13. Action by Comm'r. against contractors to recover excess, received by them from sale of scrip, at greater rate than that at which it was issued. *Comth. v. Haupt*, 315.

14. Will not lie for money paid on a note, on the ground of failure of consideration, when the facts were known at time of payment. *Sessions v. Meserve*, 699.

15. Will lie for an assignee of an order of one party on another for money due for wages to infant son of former. *Kent v. Watson*, 697.

16. Where gold coin was deposited as security and not returned, damages must be measured by the amount of gold as money. In trover, the measure would be the value of the gold at the time of conversion. *Frothingham v. Morse*, 698.

17. Will lie for value of land conveyed in accordance with an agreement to exchange, where the other party refuses to convey the other land agreed for. *Basford v. Pearson*, 125. *Smith v. Hatch*, 698.

18. On account annexed, proof that an item of credit was entered by mistake is incompetent. *Saunders v. Osgood*, 698.

19. When plaintiff may recover for money paid, as price of goods in the possession of a third person, failing to deliver. *Griggs v. Morgan*, 57.

ATTACHMENT. See **CONTRACT**, 25 ; **DEBTOR AND CREDITOR**, 2 ; **EXECUTION**, 8-12 ; **JUSTICE OF THE PEACE**, 2.

1. Garnishee may use any defence against attaching creditor which he has against defendant. *Friebaugh v. Stone*, 441.

2. Attaching creditor has right in equity to redeem land from prior incumbrance. *Chandler v. Dyer*, 508.

3. Effect of his payment of prior mortgage. *Id.*

4. Attachment under sect. 227 of N. Y. Code will not lie in a claim for unliquidated damages. *Shaffer v. Mason*, 122.

ATTORNEY. See **COURTS**, 11 ; **HUSBAND AND WIFE**, 7.

1. **ATTORNEY AND CLIENT**, 385.

2. Semble may bind his client to a case stated. *Whitcomb v. Kephart*, 440.

3. When agreement that several cases shall abide decision in one, within authority of. *Railroad Co. v. Stephens*, 441.

4. Extent of retainer to defend suit. *Smith v. Dougherty*, 504.

5. Receiving note for collection, after maturity, cannot sell or assign it. *Goodfellow v. Lamis*, 441.

AUCTION SALE.

1. Contracts for the purchase and sale of goods or lands at public auction are contracts founded upon mutual promises, and consequently they cannot be regarded as perfected and binding unless they have received the consent of the parties. *Blossom v. Railroad Co.*, 218.

2. Biddings at an auction are mere offers, which may be retracted at any time before the hammer is down, or until the bid has in some way been accepted by the seller. *Id.*

3. Auction sales under a decretal order are always regarded as under the control of the court, and subject to the power of the court to set the sale aside or open it, if the circumstances of the case require it, before it has been confirmed. *Id.*

4. Such sales are usually conducted under the advice of the solicitor of the complainants ; but his instructions, if oppressive to the respondent or unreasonable, cannot control the officer, because the officer has duties to perform to the respondent as well as to the complainant, and to the court as well as to the parties. *Id.*

5. Every such officer possesses the power, for good cause shown, to adjourn the sale ; and, if the interests of the parties require it, he is bound to exercise a sound discretion upon the subject. *Id.*

6. The mortgagee of certain premises instructed an auctioneer to offer them on a specified day by public auction for peremptory sale. A handbill was thereupon issued by the auctioneer, announcing the sale "by direction of the mortgagee," and also stating that further particulars might be obtained "from Mr. Hustwick, solicitor, or the auctioneer." At the sale the plaintiff made the highest bid, with the exception of Hustwick, who, acting for the vendor, outbid the plaintiff and bought in the property. In an action brought against the auctioneer for refusing to sell the premises peremptorily as advertised : *Held*, that he was not liable. *Mainprice v. Westley*, 304.

7. Liability of auctioneer, advertising peremptory sale, discussed. *Id. Note.*

8. At a sale of real estate by auction the vendors are not authorized in employing two persons to bid against each other, although there is a reserved price ; and such persons do not in fact bid beyond that price. *Mortimer v. Bell*, 310.

9. *Semble*, the right to fix a reserved price ought to be stipulated for and expressly notified. *Id.*

10. The rule, said to exist in equity, allowing one puffer to be employed, without notice, to prevent a sale at an undervalue, is abstractly less sound than the rule at law, which declares such employment to be fraudulent ; and rests only on the authority of decisions in lower branches of the court. : *Id.*

AUDITOR. See **ACCOUNT RENDER** ; **TRUSTS AND TRUSTEES**, 5.

BAILMENT. See **CRIMINAL LAW**, IV.

1. Duty of pledgee holding collateral security for an indefinite time. *Sitgreaves v. Bank*, 249.
2. Pledgee violates duty, in selling collateral privately without notice to debtor, or calling on him to redeem. *Id.*

BANKS AND BANKERS. See **BILLS AND NOTES**, 33-6, 39; **CONSTITUTIONAL LAW**, 2-4, 7, 9; **TAXATION**, 5-7.

1. Liability of, for its officers' acts within apparent scope of authority. *Reynolds v. Kenyon*, 181.
2. Sales by bankers for their own account, not subject to duties. *U. S. v. Fisk*, 565.
3. National banks under Acts 1863 and 1864, are lawfully created. *Utica v. Churchill*, 122.
4. Taxation in New York on stock in National banks held by a stockholder. *Id.*
5. National Banks Acts, constitutional. *People v. Assessors of Barton*, 441.

BARRATRY. See **INSURANCE**, 5.

BASTARD. See **ILLEGITIMATES**.

BELLIGERENTS. See **INTERNATIONAL LAW**, I.

BILLS AND NOTES. See **ATTORNEY**, 5; **PARTNERSHIP**, 4; **STAMP**, 2; **TROVER**, 1.

I. *Consideration.* See **ASSUMPSIT**, 14.

1. Delay in fulfilling promise to marry and services during engagement, good consideration for. *Prescott v. Ward*, 505.
2. Total or partial failure of consideration, good defence, between original parties. *Sawyer v. Chambers*, 316.
3. Evidence between indorsees and indorsers. *Id.*
4. Accommodation indorser may make same defence as maker. *Id.*
5. Rights of party receiving note for collection, from ostensible owner indebted to him. *West v. Bank*, 504.
6. Facts not constituting a valuable consideration. *Id.*
7. What is illegal consideration, avoiding. *Brown v. Tarkington*, 565.
8. Payee with notice of illegality of consideration cannot recover. *Kidder v. Blake*, 698.
9. Nor will surrender of such note be a valid consideration for a new one by maker and a third party. *Id.*
10. Nor is a release of an attachment on such new note a sufficient consideration for a promise that it should be paid. *Id.*
11. One receiving negotiable paper before maturity, from payee in satisfaction of preceding debt, is a holder for value. *Outwite v. Porter*, 249.

II. *Rights and Liabilities of Parties.* See *supra*, 2, 4, 8; **HUSBAND AND WIFE**, 24-5; **LIMITATION**.

12. The meaning and purpose of an indorsement without recourse, examined and adjudged. *Dumont v. Williamson*, 330.
13. When a note is sold in market, the vendor and vendee being upon equal terms, having each the same knowledge of the parties to the instrument, and there is no concealment or misrepresentation by the vendor, who indorses it "without recourse," he is not liable to the vendee, if the name of one of the parties is forged. *Id.*
14. He is not liable on any supposed contract growing out of his indorsement, as it is but a transfer of the note, without the usual guaranty; nor can he be held at all unless fraud, concealment, or misrepresentation is proved, or the note is given in payment of a prior indebtedness. *Id.*
15. Cases on implied warranty by vendor of a bill or note. *Id. Note.*
16. An indorsement in blank by a third person of a note, negotiable or non-negotiable, implies a warranty that the note when due will be collectible by due diligence. *Riddle v. Stevens and Others*, 651.

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17. This implication is, however, only *prima facie*, and will yield to proof of the real character of the contract. *Id.*

18. Notes so indorsed have not the sanctity of ordinary negotiable paper, and do not fall within the rules of the law merchant. *Id.*

19. Where a blank negotiable note was indorsed by a party who supposed that his name would be inserted as payee, and upon an understanding with the maker that the note should be used for a particular purpose, and the maker, without the knowledge of the indorser, filled it up by inserting the name of another person as payee, and such payee, with no knowledge of the facts, took the note for a valuable consideration, but for a different purpose from that intended by the indorser, it was *held* that the payee could not recover against the indorser. *Id.*

20. In suit by payee against indorser, defendants may show failure of consideration. *Sawyer v. Chambers*, 191.

21. Accommodation indorser may avail himself of equities between holder and principal debtor. *Sitgreaves v. Bank*, 250.

22. Facts that note was for payee's accommodation and transfer to plaintiff after maturity, alone, no defence. *Corbitt v. Miller*, 57.

23. Misappropriation, to be available as a defence, must have been injurious. *Id.*

24. Transfer of note instead of proceeds, not misappropriation. *Id.*

25. Accommodation indorser not discharged by plaintiff's neglect to secure application of a debt due makers, by a firm of which plaintiff was a member, to payment of note. *Glazier v. Douglass*, 63.

26. Cannot defeat recovery on ground of usury, unless pleaded. *Bank v. Foster*, 381.

27. Sale for less than legal discount will not put buyer on inquiry. *Id.*

28. Liability of firm for note, discounted for use of one partner. *Id.*

29. Action may be maintained against administrator on note due from his intestate, if he refuses to pay or deliver it. *Prescott v. Ward*, 505.

30. When trover may be maintained for. *Park v. McDaniells*, 505.

31. In action on a note for goods sold with warranty of quality, maker may defend for breach against payee, a third person, though latter was *bona fide* holder and had no knowledge of the warranty. *Aldrich v. Stockwell*, 57.

32. Assignment of in Illinois; duties of assignee. *Judson v. Goodwin*, 442.

III. Demand and Notice. See **DAMAGES**, 13.

33. Paper, not payable at a bank, is dishonored, upon refusal to demand at a reasonable hour during business hours. *Etheridge v. Ladd*, 249

34. Notice, immediately thereafter, good. *Id.*

35. Duties of holder as to demand. *Id.*

36. When note is payable at bank, it is left there and demand made at close of day. *Id.*

37. Providing funds after protest, will not discharge indorser. *Id.*

38. What is sufficient demand, notice, and protest. *Nave v. Richardson*, 442.

39. Bank check payable at subsequent date, entitled to days of grace. *Ivory v. Bank*, 442.

40. Official protest only proper legal evidence of presentment, demand, and refusal of foreign bills. *Bank v. Barksdale*, 442.

41. By whom, must be made. *Id.*

BILLS OF EXCEPTION. See **TRIAL**.**BLOCKADE.** See **INTERNATIONAL LAW**, III.**BOND.** See **COUNTY**, 1; **COUPONS**; **INTERNATIONAL LAW**, 4-8; **MORTGAGE**, 17; **MUNICIPAL BONDS**.

1. Not void for uncertainty, if it can be made certain, by extrinsic facts. *Bank v. Bowman*, 182.

2. When valid by heir apparent to devise future-acquired estate. *Jenkins v. Stetson*, 182.

BOND.

3. When broken and action for the breach thereof. *Jenkins v. Stetson*, 182.
4. Such a bond not void for uncertainty. *Id.*
5. Sufficient proof of breach of bond to support another during life. *Id.*
6. When bond of indemnity to constable broken. *Bancroft v. Winspear*, 505.
7. When action may be brought thereupon and what may be recovered. *Id.*
8. Coupon bonds payable to bearer are negotiable securities. *Thomson v. Lee Co.*, 571.
9. Coupons are negotiable evidences of debts for interest, and are, in substance, promissory notes, payable at a specified time. If taken by any person, after they are due, they are taken subject to all the equities which properly attach to them in the hands of the previous holder. *Bank v. New Orleans*, 555.

BOUNDARY. See **DEED**, 9 ; **ESTOPPEL**, 1.

BOUNTIES. See **CONSTITUTIONAL LAW**, 14 ; **MUNICIPAL BONDS**, 2 ; **MUNICIPAL CORPORATIONS**, 10.

BRIDGES. See **CONSTITUTIONAL LAW**, 23, 27 ; **MUNICIPAL CORPORATIONS**, 5.

BROKERS. See **AGENT**, 6 ; **COMMISSIONS**, 2, 3.

Sales for their own account, subject to duty under Act of March 3d 1865. *U. S. v. Cutting*, 565.

BUILDING. See **CONDITION**, 1-3.

BUILDING ASSOCIATION. See **ACCORD AND SATISFACTION**, 5.

CASES APPROVED, OVERRULED, &c.

Condit v. Baldwin, 21 New York Rep. 224, observed upon. *Porter v. Mount*, 292.

Freeman v. Howe, 24 How. 450, what it decided. *Buck v. Colbath*, 566.

Gelpcke v. City of Dubuque affirmed. *Havemyer v. Iowa Co.*, 566.

Hadley v. Baxendale, 9 Exch. 341, commented on. *Wilson v. Newport Dock Co.*, 748.

Jackson v. The Northern Central Railroad Co., in the Circuit Court of the United States for the District of Maryland, held not to be a correct exposition of the Pennsylvania statutes. *Maltby v. Railroad Co.*, 479.

CATTLE. See **DAMAGES**, 15 ; **RAILROAD**, 8-10.

CERTIORARI. See **TAXATION**, 10.

CHARITY. See **WILL**, 10.

CHATTELS. See **MORTGAGE**, 19.

CHECK. See **BILLS AND NOTES**, 39 ; **NEGLIGENCE**, 25 ; **STAMPS**, 2.

CLAIMS, COURT OF. See **COURT OF CLAIMS** ; **GOVERNMENT**, 6, 7.

COLLATERAL INHERITANCE TAX. See **TAXATION**, 4.

COLLATERAL SECURITY. See **SECURITY**.

COMMERCE. See **CONSTITUTIONAL LAW**, 23.

COMMISSIONS. See **AGENT**, 6.

1. Twenty per cent. for collection of small book accounts, not unreasonable. *Wynkoop v. Shardlow*, 317.

2. Where broker was to have ten per cent. on the price for which he sold land, the commissions are to be calculated on the real not the nominal price. *Wakefield v. Merrick*, 766.

3. If part of the consideration was other land, valued at a certain price though not worth so much, the value set upon it by the parties is to be taken. *Id.*

COMMON CARRIER. See **DAMAGES**, 3, 15; **EXPRESS COMPANIES**.

1. The duty of a carrier by water is not fulfilled by simple transportation from port to port. The goods must be landed and the consignee notified of their arrival. *Owners of The Mary Washington v. Ayres et al.*, 692.

2. Where goods were landed from a vessel and stored in the carrier's store-house until the consignee should call for them, but no notice of their arrival was given him, proof that such was the carrier's general custom will not relieve him from liability for damage to the goods after such storage, unless there is proof of agreement by the owners to such arrangement. *Id.*

3. The liabilities of common carriers and forwarders, independent of any express stipulation in the contract, are entirely different. *Hooper v. Wells, Fargo & Co.*, 16.

4. The common carrier who undertakes to carry goods for hire is an insurer of the property intrusted to him, and is legally responsible for acts against which he cannot provide, from whatever cause arising; the acts of God and the public enemy alone excepted. *Id.*

5. Restrictions upon the common law liability of a common carrier, for his benefit, inserted in a receipt drawn up by himself and signed by him alone, for goods intrusted to him for transportation, are to be construed most strongly against the common carrier. *Id.*

6. If a common carrier, who undertakes to transport goods, for hire, from one place to another, "and deliver to address," inserts a clause in a receipt signed by him alone, and given to the person intrusting him with the goods, stating that the carrier is "not to be responsible except as forwarder," this restrictive clause does not exempt the carrier from liability for loss of the goods, occasioned by the carelessness or negligence of the employees on a steamboat owned and controlled by other parties than the carrier, but ordinarily used by him, in his business of carrier, as a means of conveyance. The managers and employees of the steamboat are, in legal contemplation, for the purposes of the transportation of such goods, the managers and employees of the carrier. *Id.*

7. A receipt signed by a common carrier for goods intrusted to him for transportation for hire, which restricts his liability, will not be construed as exempting him from liability for loss occasioned by negligence in the agencies he employs, unless the intention to thus exonerate him is expressed in the instrument in plain and unequivocal terms. *Id.*

8. Construction and extent of restrictive clauses in carrier's receipt. *Id. Note*, 30.

9. Responsibility for their servants and agents. *Id. Note*, 30.

10. How far may limit liability by special contract. *York Co. v. Railroad Co.*, 565.

11. Consignee is entitled to an opportunity to examine goods before acceptance, and carrier may afford him such opportunity. *Lyons v. Hill*, 698.

CONDITION.

1. How and for whom equity will enforce condition in restraint of building. *Clarke v. Martin*, 184.

2. Nature of the duty not to build. *Id.*

3. General plan of lots need not be shown. *Id.*

4. Release of part of condition—when equity will enforce it in modified form. *Id.*

CONDONATION, 641.**CONFEDERATE STATES.** See **INTERNATIONAL LAW**, 1-8.**CONFESSIONS.** See **CRIMINAL LAW**, 3.**CONFLICT OF LAWS.** See **LICENSE**.**CONSTITUTIONAL LAW.** See **BANKS**, 3-5; **COURTS**, 11; **INTERNATIONAL LAW**, I.; **MANDAMUS**; **PARTY-WALL**, 2; **STATUTE**.**I. United States Notes, Stocks, and Loans.** See **TAXATION**, 4.

1. The Acts of Congress called the Legal Tender Acts, do not merely con-

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fer a privilege on debtors for their benefit, but are measures of public policy, and the right under them to pay in any lawful money cannot be waived, even by express consent. *Buchegger v. Schultz*, 95.

2. The Act of Congress of June 3d 1864 authorizes the taxation by the states of shares in the national banks, with this limitation: "that the tax so imposed under the laws of any state upon the shares of the associations authorized by this act shall not exceed the rate imposed upon the shares of any of the banks organized under the authority of the state where such association is located:" *Held*, that a state law, providing for the taxation of the shares of the national banks and for the taxation of the capital of state banks, but not of the shares, did not conform to the limitation in the Act of Congress. *Van Allen v. Nolan*, 609.

3. The above Act of Congress authorizes the shares in national banks to be taxed by state authority, irrespective of the amount of capital which the bank itself may have invested in the bonds of the United States. *Id.*

4. The minority of the court dissent from this view, holding that the states may tax shares in a national bank only so far as its capital is not invested in United States securities. *Id.*

5. As a rule, the power of taxation is a concurrent power. Congress may withhold the power, and, by virtue of its paramount authority, exclude the states, or it may leave the states free to act. An exception to the rule excludes the states from taxing the means, agencies, or instruments of the General Government. *Id.*

6. QUERE.—Has Congress power, under the Constitution, to authorize state taxation of national securities, directly or indirectly? *Id.*

7. QUERE.—Can states, whose policy does not allow the organization of banks and provide for the taxation of shares, lawfully tax shares of the national banks? *Id.*

8. All securities issued by United States exempt from state taxation, whether by express terms in the Acts of Congress or not. *People v. Assessors of Barton*, 383.

9. Power of Congress over taxation of shares in national banks. *Id.*

II. Powers of Congress. See BANKS, 3-5.

10. Act of Congress of July 4th 1864, imposing stamp duty on judicial process in state courts, unconstitutional. *Jones v. Estate of Keep*, 161.

11. Proviso in Act of Congress, February 25th 1862, constitutional. *People v. Assessors of Barton*, 441.

III. Powers of the State Legislatures. See *infra*, 30.

12. The power of the legislature is limited only by the constitutions of the state and of the United States and by the principles of natural justice. *Booth v. Woodbury*, 202.

13. The provision of the constitution of the state against taking private property for public use without compensation, has no application to the taking of property by taxation. *Id.*

14. It is not contrary to natural justice that all the inhabitants of the state should be taxed for gratuities to a part of their number who are called upon to render military service to the General Government. *Id.*

15. Every citizen is bound to take up arms in defence of his government if necessary, and the selection of a class only, of a certain age, is arbitrary, and based solely upon considerations of expediency. *Id.*

16. Although the state, as such, is under no obligation to aid the General Government in raising an army for national defence, yet the general good of the people of the state is involved in the maintenance of the General Government, and the legislature may properly act for the promotion of this general good. *Id.*

17. If the legislature could not tax the people for a gratuity where no possible public benefit would be produced, the case must yet be one of an extraordinary character to justify the interference of the judiciary. *Id.*

18. If there be the least possibility that making the gift will be promotive

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in any degree of the public welfare, it becomes a question of policy and not of natural justice, and the determination of the legislature is conclusive. *Booth v. Woodbury*, 202.

19. Powers of state legislatures. *Note to Id.*

20. Each house of legislature sole judge of election of its own members. Courts must accept its decisions. *People v. Mahaney*, 250.

21. Conflict between Act of Legislature and Constitution must be clear beyond doubt, to render former unconstitutional. *Id.*

IV. *Qualification of Voters.*

22. A person having less than one-fourth of black or African blood is a *white* person within the meaning of the Constitution of Michigan, and entitled to vote if otherwise qualified. *The People v. Dean*, 721.

V. *Regulation of Commerce.*

23. Extent of the power to regulate the use of navigable rivers, by bridging, &c., under state authority. How far the power of Congress extends as to rivers wholly within a state, and how far the states may exercise control when not expressly prevented by Congress. *Gilman v. Philadelphia*, 636.

VI. *Obligation of Contracts.* See EXECUTION, 3, 4.

24. The constitutional convention or legislature of a state may modify or change the remedy of a creditor; the only limit imposed upon these bodies by the National Constitution is, that the change or modification shall not be such as to impair the obligation of the contract. *Mede v. Hand*, 82.

25. Laws, exempting a reasonable amount of the property of a debtor from execution, are valid as to prior contracts. *Id.*

26. The validity of appraisal and exemption laws, with reference to the provision of the Constitution of the United States forbidding any state to pass a law impairing the obligation of contracts, discussed. *Id.*

27. A provision in an act of a state legislature incorporating a bridge company, that it shall not be lawful for any other person to build a bridge within two miles of the company's bridge, is a contract within the protection of the Constitution of the United States, and deprives any subsequent legislature of the right to authorize such bridge at any other time. *Chenango Bridge Co. v. Binghamton Bridge Co.*, 424.

28. State courts cannot impair contract valid according to law when made, by a subsequent different construction. *Havemyer v. Iowa Co.*, 566.

29. State courts cannot by subsequent and contrary construction render contract invalid, good at time of execution. *Thomson v. Lee Co.*, 571.

30. Legislature possessing a power, can cure evils from its irregular execution. *Id.*

CONTRACT. See ACCORD AND SATISFACTION; ACTION, 1; ARBITRATION, 1-3; CONST. LAW, VI.; CORPORATION, 16, 17; GOVERNMENT, 1, 2.

I. *Interpretation and Construction.*

1. Each distinct portion of a contract complete in itself. *Swift v. Opdyke*, 56.

2. May make it one and the same, but dependence of the parts will not be assumed. *Id.*

3. In either case delivery of a portion of the goods will take that portion out of the Statute of Frauds. *Id.*

4. A contract for a certain number of "dollars," though stipulated to be paid in gold, is not a contract for gold as bullion or merchandise, but as money, and therefore payable in any lawful money. *Buchegger v. Schultz*, 95.

5. Time of payment, depending upon receipt of money from a government contract. *Marble Co. v. Man*, 123.

6. What included in "Expenses of carrying out agreement" to organize new company. *Railroad Co v. Titus*, 184.

7. By corporation on blank form, with fac-simile seal, not under seal. *Bates v. Railroad Co.*, 506.

8. Right of holder of contract for sale of stock to dividends. *Lombardo v. Case*, 564.

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II. *Performance.* See **MILITARY SERVICE**, 1; **RAILROAD**, 5.

9. Where a railroad company has issued a commutation ticket, by which the purchaser is entitled to ride for less than the usual legal fare, and the ticket contains a contract that the commuter shall show it to the conductor when requested, the company is entitled to enforce such contract strictly, and the loss of the ticket will deprive the commuter of his right to a free passage on the cars. *Ripley v. Railroad Co.*, 537.

10. Temporary defect in article contracted for, sufficient non-compliance. *Viall v. Hubbard*, 250.

11. Change of inscription upon monument, substantial defect. *Id.*

12. Act of God, of the law, or of the other party, only legal excuses for non-performance of contract. *Niblo v. Brusse*, 248.

13. Accidental fire, no legal excuse. *Id.*

14. What "act of God" is. *Id.*

15. When law will excuse a party from fulfilling a contract. *Id.*

16. For certain fixed quantity of goods, not complied with by tender of bills of lading for larger quantity. *Stevenson v. Burgin*, 123.

17. Between first and second mortgagees. *Livingston v. Painter*, 121.

18. Specific performance thereof. *Id.*

19. When contract for sale of land within ten days, is to be performed. *Goldsmith v. Guild*, 506.

20. Time, as a general rule, of the essence of a contract in equity for sale of land. *Id.*

21. Sufficient excuse for non-performance of. *Devlin v. Railroad Co.*, 315.

22. When equity will relieve parties failing to perform. *Tibbs v. Morris*, 440.

23. Purchaser cannot rescind for fraud, after property disposed of by him by offering to restore its proceeds. *McCrillis v. Carlton*, 250.

24. His remedy, in such case. *Id.*

III. *Against Public Policy.* See **ASSUMPSIT**, 12.

25. To waive exemption of wages from attachment, is void. *Firmstone v. Mack*, 253.

26. In partial restraint of trade, not illegal. *Clark v. Crosby*, 316.

27. Agreement to pay certain sum at promissor's death, with gross sum for interest thereon, though at death more than legal interest, is not usurious. *Parker v. Coburn*, 383.

28. When contract by married woman separated from her husband, to give up control of her children, is valid. *Dumain v. Gwynne*, 505.

29. Power of court on habeas corpus, in such case. *Id.*

CONTRIBUTION. See **HUSBAND AND WIFE**, 12.

CORPORATION. See **ASSOCIATION**; **EQUITY**, 11, 12, 14, 21; **FORFEITURE**; **FRAUDS**, **STATUTE OF**, 8; **TRADE-MARK**.

1. Not liable on a quantum meruit for officer's services. *Kilpatrick v. Bridge Co.*, 124.

2. Appointment of an agent by directors to execute deed, is not a corporate act. *Arms v. Conant*, 124.

3. When a stockholder may enjoin corporate acts. *Gravenstine's Appeal*, 251.

4. Visatorial powers of Chancery under N. Y. Rev. Stats. *Howe v. Denel*, 124.

5. Actions by stockholders. *Id.*

6. When can have receiver appointed. *Id.*

7. Injunction against particular fraudulent acts of directors. *Id.*

8. Rights of scripholders measured by contract contained in scrip. *Brown v. Lehigh Nav. Co.*, 184.

9. Scripholders have no right to dividends upon stock before conversion thereof, when corporation restricted to dividends upon stock. *Id.*

10. In regard to those acts of a corporation which require care, diligence, and judgment, and which it performs through the instrumentality of general

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superintending agents, the corporation itself is to be regarded as always present supervising the action of its agents. *Railroad Co. v. Collins*, 265.

11. Amotion and disfranchisement of members of private corporations, distinguished. *Evans v. Philada. Club*, 443.

12. Power to make by-laws. *Id.*

13. Fac-simile of seal of—printed upon blank forms, not a seal at common law. *Bates v. Railroad Co.*, 506.

14. A receiver appointed by the Circuit Court of the United States for the Southern District of Ohio, to take possession of a railroad and its effects, may sue in an Ohio state court, upon a contract made by that corporation in the corporate name of the railroad, without disclosing in the petition his own name as receiver. *O. and M. R. R. Co. v. I. and C. R. R. Co.*, 733.

15. A foreign corporation, having no charter from the state of Ohio, cannot, by a transfer of a portion of a railroad already constructed in the state by legal authority, acquire a right to use and operate such railroad within that state. *Id.*

16. The plaintiffs, being authorized to construct and operate a railroad from Cincinnati to Vincennes, and the defendants, being authorized to construct and operate a railroad from Indianapolis to Lawrenceburg, of a different gauge, entered into a contract whereby the defendants, in consideration of being allowed to lay a third rail on the road of the plaintiffs from Lawrenceburg to Cincinnati, and of the agreement of the plaintiffs to furnish motive power for hauling the cars of the defendants on that part of the road, agreed, among other things, to lend to the plaintiffs \$30,000, for the purpose of erecting a depot for the plaintiffs in Cincinnati; to erect a depot at a cost of \$15,000, on lands of the plaintiffs in Cincinnati, to become the property of the plaintiffs at the expiration of the contract; to form no connections at or beyond Lawrenceburg prejudicial to the plaintiffs; and to give the plaintiffs exclusive control of the employees of the defendants while on the road of the plaintiffs. *Held*, on the construction of the charters of the plaintiffs and defendants, that such contract was beyond the competency of the contracting parties and was void. *Id.*

17. The contract also provided that the defendants should have the use of a depot and certain grounds in Cincinnati, for unloading goods and lumber, for thirty years. *Held*, that this created an easement in the land, and was, in connection with the laying and keeping up the third rail, in substance a lease, which the plaintiffs had no authority to make, and that it being for more than three years, was also invalid under the Statute of Frauds, for the want of legal acknowledgment. *Held*, also, that the defendants having as a foreign corporation no right to accept a lease of a railroad in Ohio, the plaintiffs could not have had a specific performance of the agreement, the remedies of the parties not being mutual. *Id.*

COSTS.

1. Money paid for copies of deeds to be used on trial may be charged, but not for copies merely used in preparing the case. *Ela v. Knox*, 699.

2. Taxation of, by commissioner, should show items allowed. *Morse v. Allen*, 699.

COUNTY. See MUNICIPAL BONDS, 2-4; OFFICER.

1. When bonds issued by, for subscription to railroads, bind. *County v. Parker*, 506.

2. Is a quasi corporation—when responsible for neglect of duties. *Reardon v. St. Louis Co.*, 444.

COUNTY COLLECTOR. See TAXATION, 8.

COUPONS. See BONDS, 7, 8.

1. When owner can sue on, without bonds. *Thomson v. Lee Co.*, 571.

COURTS. See AUCTION SALE, 3; CONSTITUTIONAL LAW, 10, 20, 28, 29; INTERNATIONAL LAW, 2, 3; NEGLIGENCE, 20; STATUTE, 5; TRIAL, 1-3, 5.

I. *In general.*

1. Omission of a fact necessary to be proved, to confer jurisdiction, makes proceedings void. *Merry, Adm., v. Sweet*, 127.

2. If plaintiffs' evidence has no tendency whatever to prove issue, court may determine case as matter of law. *Boland v. Railroad Co.*, 447.

3. Court of merely concurrent jurisdiction cannot disturb possession of U. S. marshal. *Buck v. Colbath*, 566.

4. In what cases and under what process, an officer will and will not be protected. *Id.*

5. Extent of rule, that among courts of concurrent jurisdiction, one first obtaining jurisdiction has exclusive right to decide it. *Id.*

6. Jurisdiction of Vt. County Court in matter of damages. *Clark v. Crosby*, 317.

II. *United States Courts.*

7. Sales of mortgaged premises under a decree of foreclosure and sale are usually made in the Federal courts by the marshal of the district where the decree was entered or by a master appointed by the court, as directed in the decree. *Blossom v. Railroad Co.*, 218.

8. When suit in state court against marshal of U. S. for official acts, may be taken up on error. *Buck v. Colbath*, 566.

9. Supreme Court will not give an answer to a merely abstract proposition. *Havemyer v. Iowa Co.*, 566.

10. U. S. District Court has no power to issue *habeas corpus*, when the prisoner is in jail upon charge of murder preferred against him by a state court. *Ex parte McCann*, 158.

11. Act of Congress, 24th January 1865, prescribing oath before admission to bar of U. S. courts, unconstitutional. *In matter of John Baxter*, 159.

COURT OF CLAIMS. See APPEALS, 1; GOVERNMENT, 6, 7.

Appeals from, to Supreme Court U. S., Act of Congress, authorizing, considered, 111.

COVENANT. See LANDLORD AND TENANT, 1-4; VENDOR AND VENDEE, 9.

CRIMINAL LAW. See ELECTIONS; EVIDENCE, 1; MILITARY SERVICE, 3-4.

I. *Practice.*

1. Proper course of questioning prisoner, under a statute allowing him to make statement to jury. *People v. Annis*, 251.

2. Jury has right in all criminal cases to find special verdict. What is sufficient finding. *Commonwealth v. Chatham*, 377.

3. When second confession, not made under any inducements, will be admissible in evidence, though first was so made. *State v. Carr*, 317.

II. *Assault and Battery.*

4. Evidence of crime charged, showing provocation and truth thereof. *Mowrey v. Smith*, 121.

III. *Incest.*

5. How indictment should charge the offence. *State v. Temple*, 638.

IV. *Larceny.*

6. Who is bailee under Pennsylvania Act of 30th March 1860, s. 108. *Commonwealth v. Chatham*, 377.

7. Larceny under s. 108. *Id.*

V. *Murder.* See EVIDENCE, 16.

8. Appellate jurisdiction of Pennsylvania Supreme Court in capital cases. *Hopkins v. Commonwealth*, 444.

9. When threats are evidence of malice, in murder. *Id.*

10. Entry of "true bill" sufficient record of finding by grand jury. *Id.*

VI. *Poisoning.*

11. Indictment, under General Statutes of Massachusetts, c. 160, s. 32. *Commonwealth v. Galavan*, 185.

CRIMINAL LAW.

VII. Rape.

12. Although rape can only be accomplished by force, and with the utmost resistance on the part of the woman, yet no more resistance can be required in any case than her condition will enable her to make; and if she be insensible, or unconscious of the nature of the act, or for any reason not a willing participator, the slight degree of physical force necessary to accomplish carnal knowledge is sufficient to constitute the offence. *People v. Cornwell*, 339.

13. If the woman's consent is obtained by fraud, the nature of the act is the same as if consent had been extorted by threats or resistance overcome by force. *Id.*

14. But where the carnal intercourse is not against the woman's desire, and no circumstance of force or fraud accompanies the act, the crime of rape is not committed, notwithstanding the woman was at the time not mentally competent to exercise an intelligent will. *Id.*

CURRENCY. See CONTRACT, 4; DAMAGES, 7, 8.

Pound sterling to be reckoned at \$4.84. *Commonwealth v. Haupt*, 315.

CUSTOM. See COMMON CARRIER, 2; INSURANCE, 7.

CUSTOMS.

1. "Market value at place," in Act of March 3d 1863, means country where bought or manufactured. *Cliquot's Champagne*, 507.

2. When probable cause of forfeiture is made out, *onus* of proving innocence is upon claimant, under Act of March 3d 1863. *Id.*

3. Meaning of "knowingly" entering goods, &c., in Act of March 3d 1863. *Id.*

4. When prices current from other dealers, admissible in evidence. *Id.*

5. Duty on champagne under Act of June 30th 1864. *Bollinger's Champagne*, 640.

6. False entry of champagne forfeits it, though duty would have been no greater, if entry true. *Id.*

7. Under the Act of Congress which provides that no distilled spirits shall be imported into the United States, except in casks or vessels of the capacity of ninety gallons wine measure and upwards, on pain of forfeiture of such spirits and also of the ship or vessel in which the same may have been imported: *Held*, that where such spirits had been received on board secretly by employees of the vessel, without the knowledge of the captain or clerk, and in violation of a standing rule and positive order, the owners of the vessel would not be liable for their loss since they formed no part of the cargo to be placed in the manifest, as such; nor would the vessel be subject to forfeiture under the circumstances, though such portion of the spirits as were not allowed by law might be liable to seizure. *U. S. v. The Gov. Cushman*, 286.

DAMAGES. See ASSUMPSIT, 16; INSURANCE, 8; MUNICIPAL CORPORATION, 3; NEGLIGENCE, 6; SLANDER, 1.

1. In a case where the mother is to be compensated for the injury or loss consequent upon the death of her infant child, the shock or suffering of feelings is not to be taken into the account, but only the pecuniary loss, and that is not to be extended beyond the minority of the child. *State of Maryland v. Railroad Co.*, 397.

2. Measure of damages, for loss of life. *Note to same*, 406.

3. When goods have been intrusted to a carrier to convey to a particular place, and by his default they are not delivered, the party entitled to them will be warranted in procuring other similar goods at the place, if there be a market for them, and the measure of damage will be the price at which such goods can be obtained in the market. If, however, there is no market for such goods at the place of delivery, the damages must be ascertained by taking into consideration various matters, such as (in addition to the cost price) the expense of transit and reasonable profits. *O'Hanlon v. Railway Co.*, 244.

4. The defendants agreed with the plaintiff to receive his ship into their docks. When the time came for receiving the ship, they were unable to do so. The ship lay in the river, and, as the tide fell, she stranded, broke her

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back, and was seriously damaged. In an action for the breach of the contract to receive the ship into the dock, the plaintiff sought to recover for the injury to the ship as special damage. The judge asked the jury, first, whether there was a place of safety to which the ship might have been taken; and, if so, secondly, whether the captain or pilot had been guilty of negligence in not taking her there. The jury gave no answer to the first question, but, to the second, answered that the captain and pilot did the best they could under the circumstances, and were neither of them guilty of any negligence. The judge thereupon directed a verdict for the plaintiff for the damages claimed. *Held* (per POLLOCK, C. B., CHANNELL and PIGOTT, BB.), that, upon the finding of the jury, the court could not decide whether the plaintiff was entitled to the damages claimed or not. *Held* (per MARTIN, B.), that the plaintiff was entitled to the damages claimed. *Wilson v. The Newport Dock Co.*, 748.

5. *Hadley v. Baxendale*, 9 Exch. 341, commented upon. *Id.*

6. Rule as to remoteness of damages discussed. *Id.*, note.

7. The measure of damages for non-performance of a contract to pay money, is the number of legal dollars, without regard to stipulations as to the kind of money by which the contract was to be discharged. *Buchegger v. Schultz*, 95.

8. A libel for the loss of a vessel on the Canadian shore of Niagara river, having been referred to a master, he reported that at the time of the loss the vessel was worth a certain sum of "dollars in gold, or Canadian currency," and that gold or Canadian currency was, at such time, at a premium of forty-nine per cent., over United States legal tender notes. *Held*, that the value being reported at a certain sum in foreign currency, the damages were to be estimated at the value of that sum in United States notes, and the use of the word "gold" in connection with Canadian currency did not require any different rule than would have been applied had the value been stated in the foreign currency only. *Councer v. Tug "Griffin"*, 45.

9. On the 1st of April the defendants contracted to sell to the plaintiff a quantity of cotton at a certain price, to be delivered during the following August. In contracts for "forward delivery," it is the universal custom of the trade for the purchaser to resell the goods before the time for delivery. Between the date of the contract and the time of delivery, the plaintiff contracted with third persons for the sale to them of cotton, to be delivered in August, relying upon the performance by the defendants of their contract to enable him to fulfil his sub-contract. At the date of the resale, the price of cotton had risen considerably, but had fallen again before the last day of August, when, however, it was still in excess of the price for which the plaintiff had purchased in April. The defendants not having delivered the cotton—*Held*, that the plaintiff was entitled, by way of damages, only to the difference between the contract price and the market price at the time of delivery, and was not entitled to recover the profits he would have realized by the performance of the sub-contract. *Williams v. Reynolds*, 370.

10. Measure of, in actions for breach of warranty on sale of chattel. *Brown v. Bigelow*, 575.

11. Rule not affected by resale at increased price. *Id.*

12. Nominal damages on a contract for delivery of stock, already sold by vendor's agent, without his knowledge. *Wilson v. Whitaker*, 123.

13. Measure of, in action for omitting to present a note at maturity and give notice. *Bridge v. Mason*, 565.

14. Evidence in mitigation of. *Id.*

15. Rule of, against carrier for injuries sustained by cattle in transporting. *Black v. Railroad Co.*, 566.

16. Measure, under a written contract, when master of a whaling ship wrongfully discharged. *Dennis v. Maxfield*, 506.

17. For refusal to permit transfer of stock, its actual value at time of refusal. *Building Association v. Sendmeyer*, 443.

18. Rule of damages for breach of contract to furnish quantity of merchandise as called for, when party refuses to receive goods. *Danforth v. Walker*, 316.

19. What are exemplary damages. *Frelenheit v. Edmondson*, 447.

20. What is proper measure in trespass. *Id.*

DEBTOR AND CREDITOR. See **ACCORD AND SATISFACTION**, 2, 4; **ATTACHMENT**; **EXECUTION**, 8, 13; **FORMER RECOVERY**, 1; **HUSBAND AND WIFE**, 22; **JUDGMENT**, 5; **PARTNERSHIP**, 1-3; **SURETY**, 3-6.

1. **APPLICATION OF PAYMENTS**, 193, 257.
2. Appropriation of payments to wages and profits between employer and employee or his attaching-creditor. *Smith v. Brooke*, 122.
3. Assignment of life policies by debtor, insolvent when insured, in trust for wife, void against creditors. *Elliott's Executors' Appeal*, 377.
4. Otherwise, if effected without fraud, on face for wife's benefit. *Id.*
5. Assignments at different dates to secure debts incurred at different times, not a general assignment. *Wynkoop v. Shardlow*, 317.
6. Conveyance by father to sons, in consideration of paying his debts, not fraudulent as to future creditors. *Preston v. Jones*, 377.
7. Where assignment shows on its face, or with extrinsic facts, that it is necessarily fraudulent, it is void. *Kavanagh v. Beckwith*, 503.
8. What statements make it fraudulent. *Id.*
9. Duties of assignees. *Id.*
10. How fraudulent intent disproved. *Id.*

DECEDENTS' ESTATES. See **EXECUTORS AND ADMINISTRATORS**.

DEED. See **DETROIT**; **HUSBAND AND WIFE**, 20; **RECORDER OF DEEDS**; **WAY**; **WITNESS**, 5.

1. Insertion of grantee's name and change of covenant after execution, invalidates. *Basford v. Pearson*, 124.
2. To make valid delivery, must pass into hands of grantee or some one for him; and his assent will not be presumed unless it be clearly beneficial to him. *Johnson v. Farley*, 699.
3. Delivery presumed from statement thereof in will of grantor. *Thompson's Executor v. Lloyd*, 125.
4. One having superior legal title, on possession without disturbance cannot bring action to set aside deed by former party on ground of fraud. *Butler v. Viele*, 508.
5. Grant of a "way" carries an easement only. *Aqueduct Co. v. Chandler*, 186.
6. Instrument conveying a base fee. *Id.*
7. General release will not include land previously conveyed by unrecorded deed. *Id.*
8. Life estate excepted from grant. *Id.*
9. Description of boundary therein. *Wellfleet v. Truro*, 186.

DELIVERY. See **DEED**, 2, 3.

1. Evidence of fact of. *Cooper v. Burr*, 567.
2. What is sufficient. *Id.*

DEPOSITION.

Deposition cannot be objected to, after reading on trial without exception, though previously had moved to suppress it. *Brown v. Torkington*, 565.

DESERTION. See **HUSBAND AND WIFE**, 2

DETROIT.

Conveyances of government lands in, by governor and judges, not within ordinary recording laws. *Moran v. Palmer*, 62.

DEVISE. See **ILLEGITIMATES**; **WILL**.

DISCOVERY. See **EQUITY**, 6-9.

DISCOVERY, TITLE BY.

1. Will not give title to islands irrespective of Act of Congress 18th August 1856. *Amer. Guano Co. v. U. S. Guano Co.*, 252.
2. Island newly discovered by its citizens, belongs to U. S. All citizens possess equal rights to go there. *Id.*
3. Who can claim as first discoverer under Act of Congress. *Id.*

DISTILLED SPIRITS. See **CUSTOMS**, 7.

DIVIDENDS. See **CONTRACT**, 8 ; **CORPORATION**, 9.

DIVORCE. See **HUSBAND AND WIFE**, I.

DOLLARS. See **CONTRACT**, 4 ; **CURRENCY** ; **DAMAGES**, 7, 8.

DOWER. See **HUSBAND AND WIFE**, II.

DRAINAGE. See **MUNICIPAL CORPORATION**, 1, 2.

EASEMENT. See **DEED**, 5.

When use of drain will not pass on conveyance of two adjoining estates on same day. *Randall v. McLaughlin*, 508.

EJECTMENT. See **ESTOPPEL**, 3.

Duty of officer, serving writ of possession. *Clark v. Parkinson*, 508.

ELECTIONS.

Indictment against judges for refusing to receive vote, must allege all pre-requisites to the right to vote. *People v. Wattles*, 252.

EQUITY. See **CONDITION**, 1, 4 ; **CONTRACT**, 20, 22 ; **EVIDENCE**, 7 ; **HUSBAND AND WIFE**, 14, 21.

1. Stipulation will not be added to contract, where no fraud or mistake in drafting. *White v. Railroad Co.*, 58.

2. Equity will not interfere to enforce a forfeiture. *Id.*

3. Bill to quiet title will not lie by holder of legal title against adverse claimant proceeding at law. *Moran v. Palmer*, 62.

4. Bill dismissed, if title on hearing differs from that alleged in bill. *Id.*

5. When complainant may have decree of abatement against defendant building in violation of condition. *Clarke v. Martin*, 184.

6. Plaintiff not entitled to discovery to enable him to prepare complaint and insert names of real defendants. *Opdyke v. Marble*, 253.

7. Office of discovery ; when it will not be granted. *Id.*

8. What application for discovery of books and papers must state. *Walker v. Bank*, 318.

9. Extent of right to discovery. *Id.*

10. Will not aid mortgagor, without allowing advancements, made after breach of condition of mortgage under oral agreement. *Stone v. Lane*, 319.

11. Bill to enforce performance of public duties by corporation, not maintainable by private party. *Buck Mountain Co. v. Lehigh Co.*, 443.

12. *Semble*, that bill on part of Commth. would lie. *Id.*

13. Will not rescind executed contract, made to delay creditors and void by statute, on application of one of parties to fraud. *Hershey v. Wieting*, 380.

14. If railroad has been found a nuisance, plaintiff may have injunction, though not damaged. *People v. Railroad Co.*, 571.

15. What is sufficient damage to uphold decree for perpetual injunction. *Id.*

16. General rule, that joint and separate debts and debts accruing in different rights cannot be set off. *Brewer v. Norcross*, 63.

17. But equity is independent of statutes of set-off ; will allow it although debts are not mutual. *Id.*

18. Bill dismissed as to party complainants joined without their knowledge or assent. *Gravenstine's Appeal*, 251.

19. Answer must allege facts, showing defendant's belief, well founded. *Brewer v. Norcross*, 63.

20. Defendant asking relief, must file cross-bill. *Id.*

21. Receiver not to be appointed where corporation not a party to bill. *Gravenstine's Appeal*, 251.

ERROR. See **COURTS**, 9 ; **CRIMINAL LAW**, 8.

1. Supreme Court will only notice apparent errors, where no exceptions are saved in lower court. *Mason v. Barnard*, 444.

2. Judgment free from error will not be reversed, because jury may have drawn inferences from refusal of witness to answer on account of privilege. *Murphy v. Tripp*, 512.

ESTATE FOR LIFE. See **DEED**, 8 ; **WILL**, 4, 5.

1. Where tenant in common for life mortgaged his interest in lands and other tenants said to mortgagee that they would not object to his cutting timber on mortgagor's share, such tenants are not estopped by such declarations after death of mortgagor. *Wood v. Griffin*, 703.

2. Entry by such mortgagee claiming the entire title is an ouster of the other tenants. *Id.*

ESTATE TAIL. See **WILL**, 8.**ESTOPPEL.**

1. When boundary is settled and fixed by parol, and improvement made by one on faith thereof, without objection, other is estopped from disputing it. *Corkhill v. Sanders*, 508.

2. Equitable estoppel applies equally to transactions in real or personal estate. *Id.*

3. Such a defence may be made in ejectment. *Id.*

4. Partners estopped from setting up claim to lands, sold by one partner, when they have sold the land received in exchange therefor and proceeds received by partnership. *Moran v. Palmer*, 62.

EVIDENCE. See **ASSUMPSIT**, 18 ; **CUSTOMS**, 4 ; **FRAUDS, STATUTE OF**, 1 ; **HUSBAND AND WIFE**, 5-7 ; **STATUTE**, 1-4 ; **TRIAL**, 3, 4 ; **WITNESS**, 1, 9, 10.

1. **TESTIMONY OF PARTIES IN CRIMINAL PROSECUTIONS**, 129, 705.

2. **PATENT AND LATENT AMBIGUITIES IN WRITTEN INSTRUMENTS**, 140.

3. In order to show the actual market value of articles of merchandise at a particular place in a foreign country, letters by third parties abroad to other third parties—offering to sell at such rates—if written in the ordinary course of the business of the party writing them, and contemporaneously with the transaction which is the subject of the suit, are admissible as evidence, even though neither the writers or the recipients of the letters are in any way connected with the subject of the suit, and though there is no proof that the writers of the letters are dead. *Fennerstein's Champagne*, 464.

4. When entries in the course of business, admissible. *Note to Fennerstein's Champagne*, 467.

5. Parol evidence not admissible to contradict recital on justice's docket. *Facey v. Fuller*, 252.

6. When parol evidence may be given in second action, of the grounds of a former judgment. *Perkins v. Parker*, 318.

7. In all cases where real transaction was a loan of money, and writings executed as security therefor, parol evidence is admissible in equity. *Tibbs v. Morris*, 378.

8. Dying declarations, inadmissible in a civil suit for the injury. *Dailey v. R. R. Co.*, 58.

9. Evidence by commission admissible, though witness be dead. *Lawrence v. Finch*, 58.

10. Must show all requirements of statute have been complied with. *Id.*

11. Any facts may be shown, that had any tendency to prove the *res gestæ*, though short of positive proof. *People v. Durant*, 59.

12. Jury may believe prisoner's statement, allowed by statute, in preference to witnesses. *Id.*

13. The journal of the warden of a prison is not a technical record in such sense as to be the exclusive evidence of the fact that defendant was in a certain prison at a certain time. *Hauser v. Comm.*, 668.

14. Where a witness had been twice convicted of an infamous offence, but exhibits a pardon for the second conviction, and says, on examination by the defendant, that he has been pardoned also for the first, the defendant cannot assign as error that the fact of such first pardon was improperly proved. *Id.*

15. A witness who, though not formally impeached, testifies under circumstances ending to discredit him, has a right to detail facts otherwise irrelevant which corroborate his statements. *Id.*

16. On a trial for murder, where it has been shown that the prisoner spoke of an intention to rob the murdered person and if necessary to murder her, the prosecution may show that the murdered person had money before her death

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and that none had been found by her administrator after the murder; and the administration-account is competent evidence of the latter fact. *Hauser v. Comm.*, 658.

17. When church record of a baptism, admissible in. *Kennedy v. Doyle*, 509.

18. Private memorandum of marriage by minister, admissible in. *Blackburn v. Crawfords*, 510.

19. How such memorandum to be proved. *Id.*

20. Objection to want of original or copy should be taken before trial. *Id.*

21. What evidence within rule admitting proof of contemporaneous frauds. *Angrave v. Stone*, 567.

22. Testimony of witnesses, hearing reports of the accusation, in slander. *Nott v. Stoddard*, 639.

23. How far evidence of the effect of the slander upon plaintiff is admissible. *Id.*

24. Of general character only admissible in civil cases when it is directly in issue. *Wright v. McKee*, 318.

25. Wife of nominal plaintiff, a competent witness. *Bonett v. Stowell*, 318.

26. Report of auditors to determine injury to plaintiff's land by defendant's mill. *Lincoln v. Manufacturing Co.*, 125.

27. Testimony of persons, other than experts. *Id.*

28. Attestation of court papers by clerk *pro tem.* *Commth. v. Connell*, 125.

EXECUTION.

1. Validity of exemption laws discussed. *Note to Mede v. Hand*, 91.

2. Exemption of wages from, in Pennsylvania. *Smith v. Brooke*, 122.

3. Pennsylvania Stay Law of 18th April 1861, unconstitutional, applied to cases in which remedy is suspended for indefinite period. *Clarke v. Martin*, 191.

4. "For the term of during the war," such an indefinite period. *Id.*

5. Scire facias sur mortgage is "process" within Pennsylvania Act of April 18th 1861. *Drexel v. Miller*, 255.

6. Mortgagor, after sale of land may have stay under the act. *Id.*

7. Qu. ? Can his vendee and terre-tenant claim benefit of act? *Id.*

8. Attaching-creditor cannot avail himself of a momentary seisin in his debtor, of a greater estate than at time of attachment. *Hazleton v. Lesure*, 126.

9. Attachment in execution on justice's transcript, not void for want of certificate of "no goods." *Swanger v. Snyder*, 378.

10. Conduct of garnishee in such case. *Id.*

11. In attachment-execution, garnishee's answers are sole foundation of judgment, and if answers set up an assignment of funds, cause must be sent to a jury. *Bank v. Gross*, 379.

12. Money coming into garnishee's hands after service and before dissolution of attachment, bound thereby. *Mahan v. Kunkle*, 379.

13. Decree awarding money to one of several execution-creditors, conclusive as to all matters involved therein. *Noble v. Cope*, 378.

14. Effect of recital in bond of indemnity. *Id.*

15. Equitable interest in a vessel may be set up against execution-creditor in sheriff's interpleader, notwithstanding Act Congress, July 29th 1850. *Richardson v. Montgomery*, 187.

16. Interest upon judgment to be computed to time when levy on land completed. *Bucknam v. Lothrop*, 186.

17. Evidence thereof. *Id.*

18. Appraiser's fees. *Id.*

19. Agreement to enforce execution upon certain specified property only, is valid and binding. *Whitney v. Ins Co.*, 126.

EXECUTORS AND ADMINISTRATORS. See BILLS AND NOTES, 29.

1. Remedy of executor who has resigned, to recover a debt due him from estate. *Prentice v. Dehon*, 509.

2. Where a remainder in personal property is given to a married woman, and after death of tenant for life a third person comes into possession, the

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next of kin of such married woman cannot maintain suit for it without taking out administration. *Weeks v. Jewett*, 704.

3. Where an executor has delivered personal property to a tenant for life, his duty under the will is completed. On death of such tenant he cannot bring an action to recover the property from a third person wrongfully holding it. *Id.*

4. Of two persons of the same relationship to decedent, one living in the state is ordinarily entitled to administration, but for reasons the court may prefer the other. *Pickering v. Pendexter*, 697.

5. Administrator may sue in his own name for intestate's goods sold by him. *Aiken v. Bridgman*, 315.

6. Set-off, in such case. *Id.*

EXPRESS COMPANIES. See COMMON CARRIERS.

1. RESPONSIBILITIES AND DUTIES OF, 1.

2. AS COMMON CARRIERS, 449, 513.

3. HOW FAR LIABLE, 648.

FELLOW SERVANT. See MASTER AND SERVANT; NEGLIGENCE, 1, 4, 5.**FIXTURES.**

1. LAW OF, BETWEEN HEIR AND EXECUTOR, 321.

2. Platform scales are. *Bliss v. Whitney*, 126.

FOREIGN ATTACHMENT.

1. When binds debt due non-resident, notwithstanding previous assignment in trust of all his estate. *Philson v. Barnes*, 379.

2. When one of two defendants competent witness for garnishee. *Id.*

FORFEITURE. See CUSTOMS, 1, 6, 7; EQUITY, 2.

OF CORPORATE FRANCHISES, 577.

FORMER RECOVERY. See EVIDENCE, 5.

1. Subsequent attaching-creditors and assignee of defendant may plead. *Child v. Eureka Powder Works*, 701.

2. Judgment in another state, during the pendency of the action here, may be pleaded as a bar. *Id.*

3. Waiver of objection to time of pleading a new plea. *Id.*

4. Judgment in contract bars subsequent action of tort for the same subject-matters. *Smith v. Way*, 126.

FORWARDERS. See COMMON CARRIERS, 3, 6.

Forwarders are not insurers, but they are responsible for all injuries to property, while in their charge, resulting from negligence or misfeasance of themselves, their agents or employees. *Hooper v. Wells, Fargo & Co.*, 16.

FRAUD. See ACCORD AND SATISFACTION, 3; ADMIRALTY, 3; AGENT, 4; ARBITRATION; BILLS AND NOTES, 14, 19; CONTRACT, 23; DEBTOR AND CREDITOR; DEED, 1, 4; EQUITY, 13; INSOLVENT, 5; JUDGMENT, 2; PLEADING, 4.**FRAUDS, STATUTE OF.** See CONTRACT, 3; CORPORATION, 17.

1. Where land is paid for jointly by A. and B., and the deed is made to A. alone, under such circumstances that a trust, not within the Statute of Frauds, would result by implication of law in favor of B., the character of such trust is not altered by an express verbal agreement or by a declaration of A. that he holds the land subject to such trust; and therefore it may be proved by parol. *McDonald et al. v. McDonald*, 675.

2. Absolute voluntary conveyance, though grantee agrees orally to hold for grantor, raises no trust in Massachusetts. *Titcomb v. Merrill*, 382.

3. Parol agreement to cut and draw growing timber, payment upon delivery, within. *Ellison v. Brigham*, 638.

4. What is sufficient part payment. *Teed v. Teed*, 380.

5. What is such possession and part payment as will take parol agreement for purchase of land, out of. *Merithew v. Andrews*, 510.

FRAUDS, STATUTE OF.

6. What constitutes part payment required by Statute of Frauds in contracts for goods. *Dow v. Worthen*, 251.
7. Original undertaking, not within. *Whitcomb v. Kephart*, 440.
8. Verbal promise of directors of corporation to pay its debts, in consideration of election, within. *Maule v. Bucknell*, 379.
9. Contract to be performed more than one year from making. *Bartlett v. Wheeler*, 441.
10. Remedy on contract, void by. *Id.*
11. Contract to work for two years, is within. *Emery v. Smith*, 699.

GIFT. See **TRUST**, 1.

1. Transfer of possession necessary to pass title by. *Cooper v. Burr*, 567.
2. Facts constituting a valid gift. *Id.*

GOLD COIN. See **ASSUMPSIT**, 16 ; **CONTRACT**, 4 ; **DAMAGES**, 7, 8.

GOVERNMENT.

1. The government, as a contractor, cannot be held responsible for the acts of the government as a sovereign. *Jones v. United States*, 353.
2. Such acts, whether legislative or executive, affect contracts of the government only as they affect the contracts of private persons. *Id.*
3. An astronomer who assists contracting engineers in their survey and is paid with their money, but who was not appointed by them and cannot be discharged by them, and who is not responsible to them, is not their agent. *Id.*
4. An Act of Congress does not take away a prerogative of the government except by special and particular words. *Id.*
5. The exclusive statutory right of the government to examine a claimant in this court, and use or withhold his testimony at its option, is such a prerogative, and is not taken away by the act declaring that "in courts of the United States there shall be no exclusion of any witness" "because he is a party to the issue tried." *Id.*
6. Therefore, in the Court of Claims a party cannot testify in his own behalf. *Id.*
7. The jurisdiction of the Court of Claims stated and reviewed. *Id.*

GOVERNOR. See **MANDAMUS**.

GRANT. See **DEED**.

GUARANTY. See **SURETY ; WARRANTY**.

GUARDIAN.

Practice on appeal from decree of court allowing account. *Patrick v. Cowles*, 702.

GUANO ISLANDS. See **DISCOVERY, TITLE BY**.

HABEAS CORPUS. See **CONTRACT**, 29 ; **COURTS**, 10.

Purpose of Act of Congress, March 3d 1860, suspending. *People v. Gaul*, 380.

HEIR. See **BOND**, 2-4 ; **WILL**, 3, 7.

HIGHWAY. See **MUNICIPAL CORPORATION**, 7 ; **NEGLIGENCE**, 11, 12, 15, 21 ; **PLEADING**, 3 ; **RAILROAD**, 10.

Party has right to presume it is reasonably safe, in its surface, margin, and muniments. *Glidden v. Reading*, 638.

HOMESTEAD. See **HUSBAND AND WIFE**, 11.

HUSBAND AND WIFE. See **CONTRACT**, 28 ; **DEBTOR AND CREDITOR**, 3, 4.

I. Marriage and Divorce. See **BILLS AND NOTES**, 1 ; **EVIDENCE**, 18, 19.

1. Evidence of misrepresentations of chastity, necessary to sustain petition to annul marriage. *Donavan v. Donovan*, 187.
2. Desertion defined. *Ingersoll v. Ingersoll*, 188.
3. Voluntary separation, not desertion. *Id.*
4. Bill to annul, for prior unchastity dismissed, when several children had

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been born, and no complaint made of wife's conduct after marriage. *Leavitt v. Leavitt*, 252.

5. Whose declarations admissible to prove marriage and legitimacy. *Blackburn v. Crawfords*, 510.

6. Baptismal register cannot prove marriage of child's parents. *Id.*

7. What evidence of priest and attorney admissible in cases of marriage and legitimacy. *Id.*

II. Dower.

8. Dower of widow of tenant in common. *Blossom v. Blossom*, 186.

9. Widow of owner of equity of redemption, entitled to dower in surplus upon sale. *Matthews v. Duryee*, 570.

10. Not barred of her action by omission to appear or assert her claim in foreclosure suit. *Id.*

11. Widow entitled to dower and homestead in equity of redemption, except as against mortgagee. *Norris v. Morrison*, 700.

12. Liability to contribution. *Id.*

13. Ante-nuptial agreement to bar dower. *Sullings v. Sullings*, 187.

14. When ante-nuptial contract by woman to relinquish share in husband's estate, will be enforced in equity. *Tarbell v. Tarbell*, 510.

III. Separate Estate of Wife. See *infra*, IV.

15. Mortgage of, in N. Y., to purchase stock in trade. *James, Ex., v. Taylor*, 126.

16. Powers to carry on trade in N. Y. under Acts of 1848 and 1849. *Id.*

17. Married woman acquiring property, must clearly show that purchase-money was her own. *Hoffman v. Jones*, 187.

18. Goods purchased on credit not hers under Act of 1848. *Id.*

19. Personal property purchased with wife's own means in own name, for her own use, becomes her separate property. *Spaulding v. Day*, 318.

20. Under statutes giving power to a married woman to enjoy, contract, sell, transfer, convey, devise; or bequeath her property, in the same manner and with like effect as if she were unmarried, a husband can convey real estate to his wife by deed directly, without the intervention of a trustee. *Amperse v. Burdeno*, 275.

21. Equity will set aside a transfer of wife's property to husband for a nominal consideration. *Stiles v. Stiles*, 252.

22. Earnings of wife belong to husband, but are not attachable by his creditors. *Hoyt v. White*, 700.

IV. Powers of Married Woman.

23. Conveyance by wife without joining husband, under Act of Mass. 1845, c. 208. *Jewett v. Davis*, 318.

24. Note of husband to third party before marriage, not extinguished by purchase by wife after marriage with her own funds. *Russ v. George*, 700.

25. Transfer by wife of such note with husband's assent—proof of such assent. *Id.*

V. Actions against Husband and Wife.

26. In an action for money had and received, for usurious interest, against husband and wife, not as such but as joint debtors simply, where they defended separately and a verdict was given against the wife alone, the jury not passing on the husband's defence, the plaintiff was allowed to discontinue his complaint against the husband and retain his verdict against the wife. *Porter v. Mount*, 292.

ILLEGITIMATES.

1. Illegitimate children entitled under Pennsylvania Act of April 27th 1855, to share real estate of mother equally with legitimate child. *Opdyke's Appeal*, 255.

2. Mother taking real estate by devise from husband becomes stock of new descent. *Id.*

INCEST. See CRIMINAL LAW, III.

INCOME. See WILL, 9.

INDEMNITY. See BOND, 6.

INFANT. See ASSUMPSIT, 15; LEGACY, 2; NEGLIGENCE, 18; PARENT AND CHILD, 2; TRUST, 3.

1. May ratify promise to pay money borrowed on joint account with another person. *Kennedy v. Doyle*, 511.

2. Claiming to retain land, upon majority, affirms mortgage given for price during infancy. *Young v. McKee*, 254.

INNKEEPER.

1. Liability for goods of guest brought *infra hospitium*. *Burrows v. Trieber*, 444.

2. If lost or stolen, need not show negligence. *Id.*

3. How such liability may be discharged. *Id.*

4. When liable for valuables under N. Y. Act of 1855. *Bendelson v. French*, 319.

5. Not, unless deposited in the safe. *Id.*

INSOLVENT. See PARTNERSHIP, 1.

1. Discharge under insolvent laws, no bar to an action by citizen of another state, who has not proved his claim. *Kelly v. Drury*, 127.

2. Discharge granted, held void, where petitioner's affidavit did not follow the statute. *Merry, Adm'r., v. Sweet*, 127.

3. When judge no authority to grant discharge in New York. *Id.*

4. Must strictly comply with provisions of law and keep proceedings in motion. *Bartholomew v. Bartholomew*, 380.

5. Sale by, of whole stock, upon credit, not necessarily fraudulent. *Scheitlin v. Stone*, 188.

INSURANCE. See DEBTOR AND CREDITOR, 3, 4.

1. Right of insurers of mortgagee's interest to assignment and subrogation upon offer to pay loss and amount due on mortgage. *Ins. Co. v. Boyden*, 127.

2. Rights of party purchasing equity of redemption of land, previously insured by owner for benefit of mortgagee, after loss and payment to latter. *Graves v. Insurance Co.*, 511.

3. Removal of goods, where policy provides against. *West v. Ins. Co.*, 127.

4. Warranty against capture, seizure, or detention, does not include continuous possession by crew. *Green v. Ins. Co.*, 188.

5. Constructive total loss, resulting from barratry. *Id.*

6. Construction of "deviation clause." *Seccomb v. Insurance Co.*, 568.

7. Evidence of usage inadmissible to construe or control legal meaning. *Id.*

8. Rule for estimating damages in case of partial loss on policy made here on goods in foreign country. *Burgess v. Insurance Co.*, 511.

9. When an open policy will include articles kept for use as well as for sale. *Id.*

INTEREST. See CONTRACT, 27; EXECUTION, 16; TRUSTS AND TRUSTEES, 4; USURY.

1. In tort, it is in discretion of jury to allow interest or not. *Black v. Railroad Co.*, 573.

2. Error to instruct them, as matter of law, to allow interest on the damages. *Id.*

3. On invested proceeds of attached property in officer's hands belongs to party entitled to the money. *Richmond v. Collamer*, 637.

INTERNATIONAL LAW.

I. *Rights of Belligerents.*

1. A private soldier of the rebel army may rely upon the belligerent rights conceded to the late so-called Confederacy, as a defence in a civil suit for property taken according to the usages of war. *Hughes v. Litsey*, 148.

2. Judgment rendered by a tribunal under authority of a rebel state government, void and execution quashed. *Filkins v. Hawkins*, 160.

3. Not a *de facto* court. *Id.*

4. On the occupation of New Orleans and the neighboring parts of the state

INTERNATIONAL LAW.

by the Federal forces, in April 1862, the officers of the rebel state government fled from Baton Rouge, the capital, to other parts of the state still held by the rebels, claiming to carry the government with them. The auditor of the state carried with him the public bonds belonging to the banks, deposited with him, according to law, as security for their circulation. These securities were held by him without warrant of law, as against any one claiming through the Federal Government. *Bank v. New Orleans*, 555.

5. Securities, so withheld within the lines of the enemy, are lost, within the meaning of the law authorizing a recovery on instruments lost, without producing them. *Id.*

6. Money, whether principal or interest, coming due on such securities, is due to the actual legal owner of them, and not to the person who wrongfully holds them. *Id.*

7. A recovery may be had by the owner for the interest due on bonds, without producing the original coupons, on its being shown that they are wrongfully withheld from him in the territory of an enemy, and are therefore inaccessible to him, and also that they were so held when they became due, so that no one, hereafter to appear, can have the rights to them of a *bond fide* holder, for value, without notice. *Id.*

8. Securities so withheld by the rebel state auditor, their *locus* being shown, are not lost within the meaning of the article of the Civil Code of Louisiana requiring that securities lost shall be advertised before a recovery can be had on them. *Id.*

II. *Rights of Neutrals.*

9. To trade between themselves and with either belligerent. *The Bermuda*, 568.

10. When contraband of war seizable. *Id.*

11. Seizure extends to the ship and other cargo in cases of fraud or bad faith. *Id.*

III. *Blockade.*

12. In a suit upon an agreement contemplating a breach of blockade of the ports of the Confederate States of America, and upon a motion to strike out the plea that such agreement was not binding by reason of a breach of blockade being illegal, *Held*, that a breach of blockade by neutrals is not an offence against the municipal law of England. *The Helen*, 176.

13. Presumption of intent to run may be inferred from a combination of circumstances. *The Cornelius*, 574.

14. Circumstances from which court will infer criminal intent. *Id.*

15. Voyage to belligerent port is one and same, whether destination be ulterior or direct, and whether performed by one vessel or several. *The Bermuda*, 569.

16. What circumstances may repel presumption of neutral ownership arising from registry. *Id.*

17. Spoliation of papers. *Id.*

ISSUE. See *WILL*, 4.

JOINT DEBTORS. See *HUSBAND AND WIFE*, 26.

JUDGMENT. See *ARKANSAS*; *EXECUTION*, 11, 13; *INTERNATIONAL LAW*, 2, 3; *MORTGAGE*, 3.

1. The courts of Pennsylvania have the powers of the Court of Chancery to relieve against inequitable judgments. *Cochran v. Eldridge*, 162.

2. The usual practice is to open the judgment and let the defendant into a defence on the merits, and on the trial of the issue, the defendant may show fraud in obtaining the judgment. *Id.*

3. The power extends to judgments on awards of arbitrators, notwithstanding the statutory remedies in cases of compulsory arbitration. *Id.*

4. Judgment found void in whole or in part, is void only as to attacking parties and valid as to others. *Shick's Appeal*, 253.

5. In distribution of proceeds of sheriff's sale, only those creditors asking issue, can have benefit therefrom. *Id.*

JUDGMENT.

6. Lien of transferred judgment continues for five years from entry in county to which it is removed. *Knauss's Appeal*, 253.

7. Where A. and B., who were equal owners as tenants in common of four tracts of land, made quit-claim deeds to each other of portions of said land of about equal value, dated October 23d 1856, intending thereby to carry into effect a parol agreement to partition such lands, the deed from A. to B. being duly recorded March 4th 1857, but that from B. to A. not being recorded until the 28th of January 1862, and, in the mean time, on the 6th of May 1857, a judgment was entered in favor of C. against B.: *Held*, that, under the registry laws of Illinois, requiring "all deeds, mortgages, and other instruments of writing relating to or affecting the title to real estate" to be recorded in the county where situated, and declaring that "all deeds, mortgages, and other instruments of writing, which are required to be recorded, shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice," and that "all such deeds and title-papers shall be adjudged void as to all creditors and subsequent purchasers, without notice, until the same shall be filed for record," C.'s judgment was a lien upon an individual half of the land allotted to A. in the parol partition, such partition having been made before the judgment was rendered; whereas, had it been made after the rendition of the judgment, the rule might have been otherwise. *Manley v. Pettee*, 486.

8. Where A., before the parol partition, had given a mortgage upon his individual interest in the lands held in common, but in terms covering the whole of said lands, to D., and on the day the partition-deeds were executed D. had released from the mortgage the lands allotted to B., in consideration of one dollar "and other good and valuable considerations," the release containing the following clause: "Hereby intending to release the interest of B. in the lands embraced in said mortgage, and retain as security for the payment thereof that portion of said lands now owned by A.:" *Held*, that, as said clause related to a different interest from that claimed to be bound by the lien of the judgment, to wit, to an interest formerly held by A., the mortgagor, in the lands allotted to B., and not to an interest of B. in the lands allotted to A., it could not be construed to give notice to C. of a partition of the lands between A. and B. *Id.*

JUDICIAL SALE. See AUCTION SALE, 3.

1. Title of purchaser, who has paid purchase-money, though security not entered by administrator. *Dixey's Executors v. Lansing*, 127.

2. Decree confirming sale, can only be declared void on appeal therefrom. *Id.*

JURY. See NEGLIGENCE, 2, 16, 20; TRIAL; WITNESS, 6.

JUSTICE OF THE PEACE. See EVIDENCE, 5.

1. Civil jurisdiction of, to be measured strictly by statute law. *Firmstone v. Mack*, 253.

2. Has no jurisdiction of attachment-execution against wages of labor or salaries. *Id.*

3. Plaintiff must establish cause by evidence before, though defendant does not appear. *Armstrong v. Smith*, 380.

4. Opinion of witness as to damage, not sufficient evidence in such case. *Id.*

LAND. See LAND OFFICE.

The plaintiff was entitled to lateral support for his land, but not for the wall upon it. The defendant dug a well in his own land, adjoining the land of the plaintiff, and when he no longer required it, filled it up, but the material used for the filling up sunk. The consequence was a subsidence of earth towards the place where the well had been, and this subsidence included particles of the plaintiff's earth, and caused the fall of the plaintiff's wall; but there would have been no appreciable injury to the plaintiff's land if the wall had not been upon it. *Held*, that there was no cause of action. *Smith v. Thackerah and Another*, 761.

LANDLORD AND TENANT. See **NEGLIGENCE**, 23.

1. The lessor reserved to himself the right to work the mines and quarries which should be under the premises demised, with the usual wayleave and passage to, from, and along said premises. The lease contained a covenant on the part of the lessor that, in working such mines, he should do as little damage and spoil to the soil as possible. *Held*, that lessor was entitled to an absolute right of way underground in working such mines. *Proud v. Bates*, 171.

2. *Held*, also, that in such working the lessor had no right to let down the surface soil, and that the right to support such surface soil was incident to the grant of the surface, and could not be taken away, unless by express agreement to that effect. *Id.*

3. Covenant by lessee to pay taxes runs with the land. *Martin v. O'Conner*, 128.

4. But lessor cannot maintain action on it against undertenant or his assignee. *Id.*

5. No new tenancy is created by a mere agreement for an increase of rent in the middle of the year of the tenancy. The term stands unchanged, by a promise to pay for a balance of a term, more rent than a tenant is required to pay by the contract under which he entered into possession. *Taylor v. Winters*, 438.

6. Such promise, unless supported by a good consideration, is a *nudum pactum*, and cannot be enforced. *Id.*

7. Liability of tenant for rent after expiration of term, where military authorities took and held possession. *Constant v. Abell*, 445.

8. Tenant cannot set up an outstanding title held by himself. *People v. Stiner*, 569.

9. If lease is invalid, by not recording, a sub-lease of same premises is also so. *Id.*

LAND OFFICE.

1. Rights and powers of officers of land department. *Hill v. Miller*, 445.

2. All presumptions, in favor of validity of patent. *Id.*

LARCENY. See **CRIMINAL LAW**, IV.**LATERAL SUPPORT.** See **LAND**.**LEASE.** See **CORPORATION**, 17; **LANDLORD AND TENANT**.**LEGACY.** See **WILL**.

1. Not to be applied in payment of debt, unless will shows such was testator's intention. *Parker v. Coburn*, 383.

2. Maintenance allowed to grandchild, otherwise unprovided for, whether legacy vested or contingent. *Leiby's Appeal*, 59.

LEGAL TENDER NOTES. See **CONSTITUTIONAL LAW**, I.**LEGISLATURE.** See **CONSTITUTIONAL LAW**, III.**LETTERS.**

Admissibility of letters written by third persons, considered. *Note to Fengerstein's Champagne*, 467.

LIBERIA, ADMINISTRATION OF LAW IN, 65.**LICENSE.**

Under U. S. laws does not give power to do business in violation of state laws. *McGuire v. Commth.*, 570. *Commth. v. Holbrook*, 570.

LIEN. See **JUDGMENT**, 6; **MORTGAGE**, 5, 7-12; **SHIPPING**, 11; **VENDOR AND VENDEE**, 3.

1. No specific lien on goods when party promises to hold the proceeds for others' benefit. *Gibson v. Stone*, 188.

2. Violation of promise, gives no right to follow goods. *Id.*

3. Parties to deeds may create, by clear and express words. *Strauss's Appeal*, 254.

4. When such liens will not be divested by sheriff's sale. *Id.*

5. Such lien will destroy priority of subsequent mortgage. *Id.*

LIMITATION.

Note secured by mortgage is not barred until the mortgage is. *Alexander v. Whipple*, 701.

LOST INSTRUMENTS. See **INTERNATIONAL LAW**, 4-8.

LUNATIC. See **ASSUMPSIT**, 10, 11.

MANDAMUS.

1. Does not lie from a state court to the governor to compel the performance of an official duty, even of merely ministerial nature, where such duty is enjoined on him by the constitution, or where, though imposed by statute, it is of such nature that he alone could perform it. *Mauran v. Smith*, 630.

2. Whether it lies to enforce a statutory duty which might as well have been devolved upon another officer, not decided. *Id.*

3. It is immaterial whether the duty be of a political nature or one pertaining to the governor in his capacity as commander-in-chief of the military forces. *Id.*

MARSHAL, UNITED STATES. See **COURTS**, 3, 7, 8.

MASTER AND SERVANT. See **NEGLIGENCE**, 4, 5; **RAILROAD**, 13.

1. The rule that the master is not responsible to one of his servants, for an injury inflicted through the negligence of a fellow-servant, is not adopted, to the full extent of the English decisions, in the state of Kentucky. *Railroad Co. v. Collins*, 265.

2. In regard to all servants of a company acting in a subordinate sphere, the one class to another, and receiving injuries while in the performance of duties under the command of a superior, whose authority they had no right to disobey or disregard, it is the same precisely as if the injury were inflicted by the act of the company; and if there is any want of care and skill in the superior, such as his position and duty reasonably demand, the company are responsible. *Id.*

3. In such cases there is no implied undertaking on the part of the servant to risk the consequences of the misconduct of the agent of the company under whose authority he acted, and through whose negligence he received the injury. *Id.*

4. Servants so situated, in distinct grades of superiority and subordination, are not to be considered as "fellow-servants," or "in the same service;" but rather in the light of strangers to each other's duties and responsibilities; and the subordinate may recover of the company for any injury sustained by reason of the ordinary neglect of the superior. *Id.*

5. But if the subordinate is himself guilty of any want of ordinary care, whereby he is more exposed to the injury, he cannot recover, unless the superior was guilty of wilful misconduct or gross neglect, but for which he might have avoided inflicting the injury, notwithstanding the negligence of the other party. *Id.*

6. Where, therefore, an engineer, while upon his engine, ordered a common laborer to do some needed work under the engine, in fastening bolts or screws belonging to it; and such workman, while lying upon his back in the performance of the service, had both his legs cut off, by the movement of the engine forward and backward, through the gross neglect or wilful misconduct of such engineer, the company are responsible for the injury, notwithstanding there might have been some want of ordinary care on the part of the subordinate, contributing to some extent to the injury, but not necessitating it, except through the gross misconduct of the superior. *Id.*

7. The rule exempting the company from responsibility for injuries inflicted upon their servants, through the want of ordinary care in other servants, does not extend beyond those who are strictly "fellow-servants" in the same grade of employment, and where one is not subject to the order or control of the others. *Id.*

8. Beyond this the company is responsible for the consequences of the misconduct of superiors towards inferiors in its service, the same as towards strangers. *Id.*

MILITARY SERVICE. See **CONSTITUTIONAL LAW**, 14, 15; **MUNICIPAL CORPORATION**, 10, 11; **RECOGNISANCE**, 1.

1. Substitute deserting cannot recover amount contracted for with principal, although latter has been relieved from service. *Gaugler v. Price's Adm.*, 59.

2. Act of Congress, March 3d 1860, not intended to prevent discharge from, on habeas corpus. *People v. Gaul*, 380.

3. Indictment for soliciting person to enlist out of state. *Comm. v. Jacobs*, 189.

4. Recruiting without authority under Stat. 1863, c. 91, s. 1. *Comm. v. White*, 59.

MILL-DAM. See **ASSUMPSIT**, 5, 6.

Semble.—May be tenancy in common of, under Act of 1803. *Campbell v. Hand*, 181.

MINES. See **LANDLORD AND TENANT**, 1, 2.

MONEY. See **ASSUMPSIT**, 16; **CONTRACT**, 4; **DAMAGES**, 7, 8.

MORTGAGE. See **ATTACHMENT**, 3; **CONTRACT**, 17, 18; **COURTS**, 7; **EQUITY**, 10; **ESTATE FOR LIFE**; **EXECUTION**, 5-7; **HUSBAND AND WIFE**, 9-12, 15; **INFANT**, 2; **INSURANCE**, 1, 2; **LIEN**, 5; **RAILROADS**, 1-4; **VENDOR AND VENDEE**, 4.

1. Persons claiming by title paramount to mortgage, not to be included in bill to foreclose, unless also interested in the equity of redemption. *Horton v. Ingersoll*, 59.

2. Agreement between holders of first and second, for foreclosure and purchase. *Livingston v. Painter*, 190.

3. When judgment in foreclosure suit not conclusive on a party thereto. *Lee v. Parker*, 191.

4. Under statute in Mo., proceeding to foreclose equity of redemption is at law. *Mason v. Barnard*, 445.

5. A mortgage cannot exist as a lien, upon lands, independent of a debt or obligation secured by it. *La Due v. R. R. Co.*, 59.

6. Record of a mortgage to secure future advances, is notice to subsequent mortgagees or purchasers to extent only of the advances made prior to such subsequent mortgage or purchase. *Id.*

7. Lien under, cannot attach for larger sum than actually loaned. *Freeman v. Auld*, 254.

8. One first recorded, presumptively the prior lien. *Freeman v. Schroeder*, 190.

9. Burden is upon junior mortgage to overcome this presumption. *Id.*

10. Sufficient evidence therefor. *Id.*

11. Evidence of delivery of. *Id.*

12. Priority of, by agreement. *Id.*

13. When part of mortgaged land is sold, remainder constitutes first fund for payment, and purchaser thereof cannot vary this rule. *Cooper v. Bigley*, 254.

14. Assignee of, takes subject to all equities in favor of mortgagor, at time of assignment. *Horstman v. Gerker*, 189.

15. "Payable in five years," may be paid any time within five years. *Id.*

16. Valid payment by mortgagor, against assignee. *Id.*

17. To secure bond by which time for payment of prior indebtedness was extended. *Bank v. Bowman*, 182.

18. Sufficient evidence of mortgage of a mortgage. *Coffin v. Loring*, 189.

19. Of chattels, containing power to sell—sale thereunder. *Chamberlain v. Martin*, 190.

20. Fraudulent assignment of, after payment, will not be set aside on bill by mortgagee, or one to whom he had agreed to assign it. *Jewett v. Davis*, 320.

21. Party assuming payment of encumbrance, on part consideration of conveyance, cannot be considered as a mortgagor. *Mason v. Barnard*, 445.

MUNICIPAL BONDS.

1. Issued under special legislative authority to aid railroads, are taxable as public stocks. *Hall v. Commissioners*, 320.

2. County bonds issued under eighth chapter of New York Laws of 1864,

MUNICIPAL BOND.

for purpose of paying bounties to United States recruits. *People ex rel. Rose v. Supervisors of Livingston*, 60.

3. How bonds issued by towns on their own credit, to be authorized. *Id.*
4. How such county bonds are to be assessed and paid. *Id.*

MUNICIPAL CORPORATION. See RAILROADS, 14, 15, 19.

1. A municipal corporation is not liable in a civil action to a private property-owner, for failure to provide sufficient sewerage to drain his lot. *Mills v. Brooklyn*, 33.

2. The public duty to provide sewerage and drainage for the city in the first place, is *quasi* judicial, and the exercise of discretion as to the manner of performing it, is to be distinguished from a neglect of duty, by which a sewer is so badly constructed or allowed to get so out of repair as to become a nuisance, for which the corporation would be responsible. *Id.*

3. Whether a municipal corporation, acting under lawful and undisputed powers, may be liable for consequential damages to property-owners, discussed. *Id.*, Note.

4. Distinction is between discretionary or *quasi* judicial duties and those merely ministerial. *Id.*

5. Duty of, to open and repair streets, sidewalks, and bridges. *City of Joliet v. Verley*, 445.

6. Must so exercise its authority as not to endanger lives or limbs of inhabitants. *Id.*

7. Bound to keep a common way for travel, in a safe condition. *Burnham v. City*, 571.

8. Liability of, to private person, by obstruction of the flow of water of a stream, from exercise of municipal rights. *Wheeler v. City*, 575.

9. Towns, like other corporations, have no powers except such as are expressly or impliedly granted to them by the legislative power of the state. *Booth v. Woodbury*, 202.

10. In the absence of authority so conferred, a town has no power to appropriate money for gratuities to men drafted for the military service of the United States. *Id.*

11. But the legislature has power to authorize a town to confirm such action by another vote on the subject, and such confirmatory action of the town will be valid. *Id.*

12. Powers of, are limited. Note to *Id.*

13. Cannot subscribe for stock in public improvement unless authorized by legislature. Extent of this authority, and how conferred. *Thomson v. Lee Co.*, 571.

14. Having right to purchase railway, cannot maintain bill to prevent increase of fares. *Cambridge v. Railroad Co.*, 317.

15. Assessment under city ordinance, not made in conformity therewith, is illegal and void. *In matter of Turfler's Petition*, 381.

16. Duties of assessors. *Id.*

MUNICIPAL LAW. See INTERNATIONAL LAW, 12, 13.**MURDER.** See CRIMINAL LAW, V.**NAME.** See ACTION, 5.**NEGLIGENCE.** See COMMON CARRIERS, 6-10; EXPRESS COMPANIES; FORWARDERS; INNKEEPER, 2; MASTER AND SERVANT; RAILROADS, 6-9, 11, 12; SUNDAY, 1, 3; TELEGRAPH.

1. Where an employee upon a railway is injured by the negligence of the engineer of the company, and is himself guilty only of such neglect and want of care, as would not have exposed him to the injury but for the gross neglect of the engineer, and when the engineer might with ordinary care have avoided the injury, he is not precluded from maintaining his action. *Railroad Co. v. Collins*, 265.

2. What is gross neglect in the engineer may be determined by the court, as a question of law, when there is no controversy in regard to the facts. *Id.*

NEGLIGENCE.

3. Law and cases on negligence of fellow-servants, discussed. *Railroad Co. v. Collins*, Note, 272.

4. Railroad co., defendant, may show that the accident occurred from the failure of the plaintiff's fellow-servant to obey the company's instructions. *Durgin v. Munson*, 60.

5. Railroad not responsible to employee for personal injury arising from negligence of switchman, if had used due care in his selection. *Gilman v. Railroad*, 572.

6. Upon a hearing in damages, defendant may show contributory negligence to reduce damages to a nominal sum. *Daily v. Railroad Co.*, 60.

7. The plaintiff cannot recover for an injury resulting from the negligence of the defendant, if, notwithstanding such negligence, he might have avoided the injury by the exercise of care and prudence on his part, or if his own want of such care and prudence or that of the party injured, in any way contributed directly to the injury. *State of Maryland v. Railroad Co.*, 397.

8. Effect of contributory negligence, considered. *Note to same*, 405.

9. What is such contributory negligence of plaintiff as will prevent recovery. *Zoebisch v. Tarbell*, 572.

10. Passenger leaving a train improperly, cannot maintain action for personal injury received thereby. *Frost v. Railroad Co.*, 573.

11. Traveller leaving highway voluntarily, but from reasonable fear of injury, if he remain, may recover for injury received in so doing. *Glidden v. Reading*, 638.

12. Such leaving is, in the eye of the law, a leaving from necessity. *Id.*

13. Want of care or prudence of companions of blind man. *Id.*

14. The general practice of the defendants in running their cars backwards across the streets of a city while the engineer is too remote to see the track, and while there is no one upon the cars to look out for persons or property liable to be injured thereby, is no ground of inferring negligence against them. The question to be determined is whether there was negligence at the particular time when the injury occurred. The inference in that direction is rather weakened than strengthened by showing such general practice. *Bannon v. Railroad Co.*, 470.

15. Railway companies operating their trains along or across the streets of a city are bound to exercise ordinary care to do it in such a manner as not to inflict injury upon persons or property lawfully using the same streets. And persons so exposed to injury are bound to exercise similar caution to avoid such injury. *Id.*

16. It is a question of law how far the evidence in the case will justify a finding of gross negligence. *Id.*

17. The law requires the same degree of care and diligence towards all persons, without distinction of age or capacity, and the same rule of damages applies to all. *Id.*

18. Degree of care required towards children of tender years. *Note to Bannon v. Railroad Co.*, 477.

19. Accident and injury, *prima facie* evidence of—what company must show. *Railroad v. Worthington*, 446.

20. Province of the court and jury in such cases. *Id.*

21. Railroad co. responsible for flagman's negligence at a private crossing over their track in city used by public as a highway. *Sweeney v. Railroad Co.*, 573.

22. Whether carrier can exempt himself from responsibility for his own negligence. *Note to Hooper v. Wells, Fargo & Co.*, 32.

23. Liability of owners of piers, in possession of tenants. *Moody v. Mayor*, 60.

24. Liability of owners of store for neglecting suitable precautions against accident from open trap-door, to party having private way across. *Elliott v. Pray*, 572.

25. Bank presenting check, without allowing days of grace, liable for. *Ivory v. Bank*, 442.

NEGOTIABLE INSTRUMENTS. See BANKS, 7, 8.

NOTARY PUBLIC.

Cannot act as partners or by agents. *Bank v. Barksdale*, 442.

NOTICE. See **BILLS AND NOTES**, III.; **COMMON CARRIER**, 1, 2; **JUDGMENT**, 7, 8; **MORTGAGE**, 6; **VENDOR AND VENDEE**, 5, 8.

NUISANCE. See **EQUITY**, 14; **MUNICIPAL CORPORATION**, 2.

A. brought an action against a smelting company for injuring his trees by noxious vapors, and the judge directed the jury to find for the plaintiff, if the evidence satisfied them that real, sensible injury had been done to the enjoyment or value of A.'s property by such vapors. The jury found for the plaintiff: *Held*, that the judge had rightly directed the jury, and that the defendants were liable for sensible injury done to the plaintiff's property, notwithstanding that their business was an ordinary business, carried on in a proper manner, and in a neighborhood more or less devoted to manufacturing purposes. *Smelting Co. v. Tipping*, 104.

OFFICER. See **AUCTION SALE**, 4, 5; **BANKS**, 1; **COURTS**, 4.

1. Owner cannot maintain action against, taking goods under replevin against another. *Willard v. Kimball*, 447.

2. County officer defined—who are not. *County v. Parker*, 506.

ORPHANS' COURT. See **JUDICIAL SALE**.

OUSTER. See **ESTATE FOR LIFE**, 2.

PARENT AND CHILD. See **CONTRACT**, 28.

1. Law makes no presumptions about legitimacy—it is a question for jury. *Blackburn v. Crawfords*, 511.

2. Contract made with the government by father in name of infant son—rescission by government and assignment for value by the father in the son's name—assignment binds all parties but the son. *Putnam v. Hill*, 767.

PARTITION. See **JUDGMENT**, 7, 8.

Bill for petition will not lie, when it is denied or depends upon doubtful facts or questions of law. *Dewitt v. Ackerman*, 61.

PARTNERSHIP. See **BILLS AND NOTES**, 28; **ESTOPPEL**, 4; **NOTARY PUBLIC**.

1. Where a partnership firm becomes insolvent, having partnership property and partnership creditors, and also separate property and separate creditors, and the partnership creditors exhaust the partnership property, the separate creditors have a priority of right to receive an equal percentage of their claims out of the separate estates, and if anything remains it is to be distributed among both classes of creditors *pari passu*. *Northern Bk. of Kentucky v. Keizer*, 75.

2. History and state of the law on subject of partnership and separate creditors. *Note to Bank v. Keizer*, 78.

3. Creditor may sue secret partner, when discovered. *Richardson v. Farmer*, 447.

4. Fact that note is signed by individuals composing a firm, not sufficient to prove it a partnership debt in a contest between creditors. *Gay v. Johnson*, 700.

5. Agreement for loan of money, subject to risks, payment of interest and bonus, but excluding interest in profit and loss and control in business, will not make party a partner. *Gibson v. Stone*, 61.

6. Partnership lands, personal property. *Moran v. Palmer*, 62.

PARTY. See **WITNESS**, 1-3, 7, 8.

PARTY-WALL.

1. Compensation for, in city of Camden, N. J. *Hunt v. Ambruster*, 61.

2. Ordinance authorizing erection not repugnant to Constitutions of U. S. or N. J. Such laws are reasonable and useful regulations. *Id.*

PLEDGE. See **BAILMENT**.

PLEADING. See FORMER RECOVERY, 1-3.

1. If words constitute two distinct slanders, defendant may justify one and plead general issue as to the other. *Nott v. Stoddard*, 639.

2. Defendant must justify language in the sense alleged—not the very words. *Id.*

3. Declaration in action for damages for injury, describing highway and its defects in general terms, good. *Powers v. Woodcock*, 039.

4. Party charging fraud, must aver fully and explicitly the facts constituting it. *Butler v. Viele*, 512.

POISONING. See CRIMINAL LAW, 11.

POLICE. See TRUST, 2.

POWER OF ATTORNEY,

To transfer stock, executed in blank, good. *Building Association v. Sendmeyer*, 443.

PRACTICE. See ACTION; ADMIRALTY, 3; AMENDMENT; APPEAL; COURTS; CRIMINAL LAW, I.; DEPOSITION; EQUITY, 4, 18-21; JUDGMENT, 2; MORTGAGE, 1, 3, 4; PROBATE; TRIAL.

PRISON WARDEN'S JOURNAL. See EVIDENCE, 13.

PRIZE.

1. No damages or costs, where has been "probable cause for seizure." *The Thompson*, 573.

2. When probable cause exists. *Id.*

3. What is to be considered as capturing force in distributing prize-money, under Act of July 7th 1862. *The Atlanta*, 639.

PROBATE. See APPEAL, 3.

Practice upon appeals from decree allowing a guardian's account. *Patrick v. Cowles*, 702.

PROMISSORY NOTE. See BILLS AND NOTES.

RAILROADS. See CONTRACT, 9; CORPORATION, 15; EQUITY, 14; MASTER AND SERVANT; MUNICIPAL CORPORATION, 14; NEGLIGENCE, 1-5, 10, 14, 15, 19, 21; TAXATION, 1-3.

1. Cannot mortgage its franchise without further authority than act of incorporation. *Commth. v. Smith*, 574.

2. Power to issue bonds. *Id.*

3. Second mortgagee may take advantage of invalidity of first mortgage-bonds. *Id.*

4. But cannot maintain bill to cancel first mortgage. *Id.*

5. Party not complying with contract for purchase of road and organization of new company, cannot claim any benefits under it. *Carpenter v. Catlin*, 248.

6. Railway companies owe a higher degree of watchfulness and care to those sustaining the relation of passengers, than to mere strangers having no fiduciary relations with the company. *State of Maryland v. Railroad Co.*, 397.

7. In the former case the utmost care and skill is required, in order to avoid injuries; but in the latter case, only such as skilful, prudent, and discreet persons, having the management of such business in such a neighborhood, would naturally be expected to put forth. *Id.*

8. A railroad company has the exclusive right of way along its track, and, in Pennsylvania, is not bound to provide fences to keep out cattle. *North Penna. R. R. Co. v. Rehman*, 49.

9. Hence, if domestic animals wander on the track, whether with or without the owner's knowledge, and are killed without wantonness or gross negligence of the railroad company, the latter will not be responsible in damages for their death. *Id.*

10. The fact that the point where they were killed was at the intersection of the railroad with a public highway does not change the rule. A highway is public for purposes of travel only, and cattle wandering unattended are not

within the class to whose protection the railroad company is bound to look in crossing. *North Penna. R. R. Co. v. Rehman*, 49.

11. The statute of Missouri giving a remedy to the representatives of a passenger killed upon a railway train, goes upon the same principle which before obtained in regard to injuries to passengers, that such injury or death *prima facie* results from want of due care in the company. *H. and St. J. R. R. Co. v. Higgins*, 715.

12. This presumption is not conclusive under the statute, but may be rebutted by evidence of the cause of the injury. *Id.*

13. One who had been in the employment of the company as an engineer and brakeman, until his train was discontinued, a few days previous, and who had not been settled with or discharged, although not actually under pay at the time, and who signalled the train to take him up, and who took his seat in the baggage-car with the other employees of the company, and paid no fare and was not expected to, although at the time in pursuit of other employment, cannot be considered a passenger. *Id.*

14. It will not deprive of his remedy a passenger who comes upon the train in that character, and is so received, that he is allowed, as matter of courtesy, to pass free, or to ride with the employees of the road in the baggage-car. But a passenger who leaves the passenger-carriages to go upon the platforms or into the baggage-cars, unless compelled to do so for want of proper accommodations in the passenger-carriages, or else by the permission of the conductor of the train, must be regarded as depriving himself of the ordinary remedies against the company for injuries received, unless upon proof that his change of position did not conduce to the injury. *Id.*

15. When not liable for damage to land by construction of an embankment. *Clark v. Railroad Co.*, 447.

16. It is a reasonable regulation for a railroad corporation to fix rates of fare by a tariff posted on their stations, and to allow a uniform discount on these rates to those who purchase tickets before entering the cars. *The State v. Goad*, 143.

17. A passenger, who has thus neglected to purchase a ticket, has no right to claim the discount, and if he refuses to pay to the conductor the fare established by the tariff, the conductor is justified in compelling him to leave the train at a regular station. *Id.*

18. Policy and right of making discrimination between fares by railroad company. *Note to Id.*

19. Power of N. Y. common council to authorize extension of city railroad. *People v. Railroad Co.*, 571.

RAPE. See CRIMINAL LAW, VII.

REAL ESTATE. See HUSBAND AND WIFE, 20; ILLEGITIMATES, 2; PARTNERSHIP, 6.

REBELLION. See INTERNATIONAL LAW, I.

RECEIVER. See CORPORATION, 14; EQUITY, 21.

RECOGNISANCE.

1. Good answer to, that defendant was in military service at day of appearance. *People v. Cushney*, 382.

1. Acknowledgment of execution of, by prisoner's sureties before judge of another county. *People v. Hurlbutt*, 382.

RECORD. See CRIMINAL LAW, 10; EVIDENCE, 5, 13, 17.

RECORDER OF DEEDS.

1. The liability of a recorder of deeds on a false certificate of search only extends to the party taking the certificate, and does not entitle a future purchaser to recover against him. *Commonwealth v. Harmer*, 214.

2. The sureties of the recorder of deeds are not liable for false searches. *Id.*

RECORDING ACTS. See DETROIT; JUDGMENT, 7, 8; LANDLORD AND TENANT, 9; MORTGAGE, 6, 8-10.

RELEASE. See CONDITION, 4 ; DEED, 7.

REPLEVIN. See OFFICER, 1.

REVENUE ACTS. See CUSTOMS.

RIVER. See CONSTITUTIONAL LAW, 23.

SALE. See AUCTION SALE ; CONTRACT, 19, 20 ; WARRANTY.

SCRIPHOLDERS. See CORPORATION, 8 9.

SEAL. See CORPORATION, 13.

SEAMAN. See SHIPPING, 1-4.

SECURITY. See BAILMENT ; LIMITATION.

SERVICES. See ASSUMPSIT, 1-4.

SET-OFF. See EQUITY, 16, 17 ; EXECUTORS AND ADMINISTRATORS, 6 ; VENDOR AND VENDEE, 13.

1. Note of principal and surety may be set off against a note due principal alone. So a judgment. *Andrews v. Varrell*, 702.

2. It is not material that the judgment claimed to be set off is in the name of a nominal plaintiff, if it really belongs to defendant. *Id.*

3. If defendant held a note against plaintiff which passes into judgment during plaintiff's suit, he cannot set off either note or judgment. *Id.*

SETTLEMENT.

Not acquired in N. Y. by living in house built by mistake on another's land, adjoining own. *Wellfleet v. Truro*, 186.

SEWERAGE. See MUNICIPAL CORPORATION, 1, 2.

SHERIFF.

1. In suit against a sheriff for default of his deputy, the latter being released is a competent witness. *Stevens v. Colby*, 703.

2. Sheriff not liable for defective return made by plaintiff's direction. *Id.*

SHERIFF'S SALE. See JUDGMENT, 5 ; LIEN, 4.

SHIPPING. See EXECUTION, 15.

1. By the maritime law, seamen must be cured of diseases incurred during their employment, when not produced by their own fault, at the expense of the ship. *Moseley v. Scott*, 599.

2. The statutes of the United States do not change the rule thus existing, except in the requirement of a medicine-chest on board the vessel, and then there must be proper directions for the administration of the remedies, or a suitable person to prescribe them. The expense of food and nursing are still to be borne by the vessel. *Id.*

3. The sailor engaged on board a steamboat on the Western rivers is entitled to the same privileges as merchant seamen on foreign voyages. *Id.*

4. The remedy in every proper case is not confined to the admiralty, but may be pursued in the state courts. *Id.*

5. A bill of lading given by a steamer navigating the Western rivers, which contains the "privileges of lighting and reshipping," will be construed as granting to the vessel the privilege of reshipping during the voyage, according as its interest or convenience may advise, and as at the same time imposing upon it the duty to do so when practicable and necessary. *Dorris v. Copelin*, 492.

6. The privilege cannot be exercised before the voyage has been undertaken or commenced by the original vessel. It would not justify the steamer, which gives such a bill of lading, in shipping and transporting the cargo by another vessel. In this there would be such a departure from the contract as would render the original vessel liable as insurer. *Id.*

7. Lighterage does not apply to overloading at the commencement of a voyage. *Id.*

8. When shipper of cargo for part of a longer transit, bound by course of trade connected with forwarding it. *The Convoy's Wheat*, 509.

9. His power in such case and duty to telegraph. *Id.*

SHIPPING.

10. Liability of owners, where bills of lading vary from contract of affreightment. *Gage v. Tirrell*, 191.

11. Agreement between owner and master to sail on "shares" does not release vessel from ordinary liability for supplies. *Vose v. Cockcroft*, 570.

SLANDER. See EVIDENCE, 22-23 ; PLEADING, 1, 2.

1. Evidence of plaintiff's general character, in mitigation of damages. *Moyer v. Moyer*, 191.

2. When words elicited by inquiry, are and are not, a ground of action. *Nott v. Stoddard*, 639.

STAMP. See CONSTITUTIONAL LAW, 10.

1. An instrument which, upon its face, requires a certain stamp is admissible in evidence if it bears that stamp, although there are facts connected with it which, if inquired into, show that it ought to have borne a different stamp. *Austin v. Bunyard*, 241.

2. Held, therefore, in an action against the maker of a post-dated banker's check, which was stamped only with the ordinary penny stamp, that although it subjected the parties to it to a penalty for not being stamped with a bill-of-exchange stamp, was, nevertheless, receivable in evidence. *Id.*

3. Precept of register of wills for an issue, not a writ or original process under Act 1st July 1862. *Shay v. Henk*, 63.

4. Omission cured by proviso to 16th section, Act 3d March 1863. *Id.*

5. Act 1862 does not require stamp to magistrate's certificate of his record of a conviction, taken to Superior Court on appeal. *Commth. v. Hardiman*, 63.

6. Award of arbitrators does not require. *Adley v. Gray*, 255.

7. Note made before 1st June 1863 admissible in evidence, if stamped before offer. *Derry v. Baker*, 447.

STATUTE. See GOVERNMENT,

1. The copy of a legislative act, certified by the chairman of each house, signed by the Governor, and filed in the office of the Secretary of State, is the sole and conclusive evidence of the existence and contents of a statute. *State v. Young*, 679.

2. The journals of the legislative houses are not competent evidence to show that a copy of a statute, authenticated in the manner above stated, does not contain the whole of the law as, in point of fact, it was enacted. *Id.*

3. It is the province of the legislative department to certify, in its own mode, the laws it enacts, and such certificate is conclusive on the other co-ordinate departments of the government. *Id.*

4. Such also was the rule at common law. *Id.*

5. When Legislature adopt or re-enact a statute, the construction as settled by the courts is also adopted. *Frink v. Pond*, 704.

STATUTE OF FRAUDS. See FRAUDS, STATUTE OF.**STAY LAWS.** See CONSTITUTIONAL LAW, 24 ; EXECUTION, 3-7.**STREET.** See MUNICIPAL CORPORATION ; NEGLIGENCE, 14, 15.**SUBROGATION.** See INSURANCE, 1, 2.**SUNDAY.**

1. Injury received by horses and carriage through negligence may be recovered, though let by plaintiff to defendant for use declared unlawful by the Sunday Act. *Nodine v. Doherty*, 346.

2. The hire of horses and carriages let on Sunday to be used to ride to a place known as a place of resort for pleasure, cannot be recovered, being let for a purpose made unlawful by statute. *Id.*

3. Travelling on, may be proved in defence to action for injury from defective way. *Jones v. Andover*, 382.

4. What is illegal travel on. *Id.*

SUPREME COURT OF UNITED STATES. See COURTS, 9.

SURETY. See **RECORDER OF DEEDS**, 2 ; **SET-OFF**, 1-3 ; **TAXATION**, 8.

1. If a surety signs and delivers to his principal an instrument perfect upon its face, with a condition that it shall not be delivered to the obligee, payee, or grantee, until some other persons who are agreed upon shall also execute the same, and the principal delivers the instrument without regard to the condition, and the obligee, payee, or grantee has no knowledge of the condition, the delivery will bind the surety. *Deardorf v. Foresman*, 539.

2. A. executed his promissory note, payable to the order of B., and induced C. and D. to sign the note as sureties, and redeliver it to him, A., upon the promise that he would procure other persons, named by them, also to execute said note. In disregard of his promise, A. delivered the note to B. without procuring the additional sureties agreed upon. *Held*, that the delivery to B. was absolute, and that the sureties were liable, without regard to the condition. *Id.*

3. Where a creditor employs legal process against a debtor in the usual way and without unnecessary delay, it is *prima facie* proof of such diligence in collecting his debt as will give him a claim against a guarantor. *Hoffman v. Bechtel*, 745.

4. But this presumption may be overcome by proof that the creditor had special knowledge of assets or opportunity of collecting his debt, and that his failure to do so was the result of bad faith, or neglect to do what a prudent creditor who had no other security but the debtor's obligation would have done under the circumstances. *Id.*

5. Creditor not bound to use *active* diligence to collect debt of principal. *Glazier v. Douglass*, 63.

6. What security, discharge of which by creditor, will release a surety. *Id.*

7. Suretyship and guaranty, distinguished. *Allen v. Hubert*, 192.

TAXATION. See **BANKS AND BANKERS**, 2, 4 ; **BROKERS** ; **CONSTITUTIONAL LAW**, 5-9, 13, 14 ; **MUNICIPAL BONDS**, 1 ; **MUNICIPAL CORPORATION**, 15.

1. Loans of railroad corporations are subject, in Pennsylvania, to a three-mill tax upon the principal of the loans, though they be owned by a citizen of another state. *Maltby v. Railroad Co.*, 479.

2. It is the duty of the corporation officers to retain the tax from the accruing interest, whether it be payable on coupons or otherwise. *Id.*

3. Such loans are *property*, in a taxable sense, here in Pennsylvania, and the Acts of Assembly imposing the tax and regulating the mode of its collection are constitutional and valid. *Id.*

4. United States stocks and bonds are subject to a state collateral inheritance tax, like other property in similar circumstances. *Penna. v. Strode*, 435.

5. There is no objection to a state tax upon the owners of shares of stock in national banks, in common with other property in the state. And in estimating the value of such shares for purposes of taxation under state laws, it is not requisite to deduct that portion of the capital or property of such bank which is invested in United States stocks. The tax in such cases is an assessment upon the person of the owner, with regard to property, and in no sense a tax upon the bank or its capital. *Parker v. Siebern*, 526.

6. Of national banks, considered. *Note to Id.*, 532.

7. Assessors cannot assess shares in national bank under New York Act of March 9th 1865. *People v. Assessors of Barton*, 441.

8. A county collector of revenue who *compulsorily* collects taxes assessed upon property *exempt* from taxation, where such exemption is *apparent* upon the face of the tax-book, is liable (and so also are his sureties) on his official bond for the amount of taxes so illegally collected and received by him. *State v. Shacklett et al.*, 664.

9. Assessors not bound by a sworn return of property. *Hall v. Commissioners*, 320.

10. Certiorari to review assessments in New York. *People ex rel. v. Commissioners*, 123.

11. When will not be allowed. *Id.*

12. Farm, divided by line, taxable where mansion-house is located. *Bausman v. Lancaster*, 383.

TAX TITLE.

1. Presumption of correctness of proceedings, will prevail in favor of tax-deed, unless evidence be given of facts inconsistent therewith. *Wright v. Dunham*, 64.
2. Insufficient evidence to defeat. *Id.*

TELEGRAPHS.

1. Where a telegraph company receives a message addressed to a place beyond its route, and takes the compensation for the entire distance, it engages for the due delivery of the message at its destination, unless it expressly limits its responsibility to its own route, or the circumstances are such as to clearly indicate that such was the understanding of the contracting parties. *Telegraph Co. v. De Rutte*, 407.
2. The receiver of the message is entitled to sue for his loss by the company's negligence. *Id.*
3. The same general principles apply to the liabilities of telegraph companies as to common carriers, but not invariably nor to the same extent. *Id.*
4. A telegraph company has a right to limit its liability by requiring a message to be repeated, but knowledge of this requirement must be brought home to the sender. *Id.*
5. Where a person received a telegram in which there were several errors, all but one of which, however, he interpreted correctly, and that one was not apparent on its face, it is not such negligence in him not to have the message repeated, as will prevent his recovery for loss incurred in consequence of the undiscovered error. *Id.*
6. Where a party receiving a telegram erroneously directing him to purchase wheat at 25 francs instead of 22 francs as the message should have been, purchases a quantity of wheat which he is obliged to resell at a lower price, the loss is such a direct result of the negligence as will entitle him to recover. *Id.*
7. The New York Act of 1848 in regard to telegraph companies and messages, is intended as much for the protection of the companies against combinations and monopolies among themselves, as for the public. *Id.*
8. Nature and extent of responsibility, considered. *Id.*, Note, 418.

TENANT IN COMMON. See ESTATE FOR LIFE ; HUSBAND AND WIFE, 8 ; JUDGMENT, 7, 8 ; MILL-DAM.

For life, is liable to remainder-man for injury to the inheritance by a stranger or a co-tenant, and after satisfaction, may recover over against the wrongdoer. *Wood v. Griffin*, 703.

TENANT FOR LIFE. See ESTATE FOR LIFE.**TIME.** See CONTRACT, 20 ; MORTGAGE, 15.**TITLE.** See VENDOR AND VENDEE, 1, 2, 4, 11.**TORT.** See AGENT, 5 ; FORMER RECOVERY, 4 ; INTEREST, 1.**TOWNS.** See MUNICIPAL BONDS, 3 ; MUNICIPAL CORPORATIONS.**TRADE-MARK.**

1. A trade-mark, which is merely descriptive of the kind of articles or goods to which it is applied, is not a trade-mark in a legal sense. *Sherwood v. Andrews*, 588.
2. A trade-mark, to entitle an assignee to protection in its exclusive use, must indicate by appropriate words, as "executor," "assignee," or "successor," his relation to the original proprietor. *Id.*
3. The trade-mark of a defunct corporation does not descend to the stockholders at the time of its dissolution. *Id.*

TRESPASS. See DAMAGES, 20.**TRIAL.**

1. Permission to the jury to take out with them papers or written documents used as evidence on the trial, is entirely within the discretion of the judge

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presiding at the trial, without regard to the consent of parties. *Porter v. Mount*, 292.

2. Verdict will be set aside, if jury have copy of General Statutes in jury room, without knowledge of the parties. *Merrill v. Nary*, 573.

3. It is a preliminary question for court, whether agency sufficiently proved to admit agent's acts and declarations in evidence. *Cliquot's Champagne*, 508.

4. Irrelevant testimony may be admitted, if afterwards made pertinent by other testimony. *Black v. Railroad Co.*, 573.

5. Allowance of a leading question is matter of discretion with the judge. *Id.*

6. When exception to judge's charge need not be specific. *Sawyer v. Chambers*, 191.

7. One exception to decision good, if judge excludes whole defence. *Sawyer v. Chambers*, 381.

8. Party cannot except to instruction given to jury at his own request. *Dennis v. Maxfield*, 506.

TROVER. See ASSUMPSIT, 16 ; BILLS AND NOTES, 30.

1. Where a note was given for goods sold, but the property in the goods was not to vest until payment of the note, an assignment by the vendors of their title to the goods carries the note, and they cannot maintain trover for it. *Esty et al. v. Graham*, 703.

2. For bank-bills—sufficiency of description. *Colebrook v. Merrill*, 703.

TRUSTS AND TRUSTEES. See FRAUDS, STATUTE OF, 1, 2 ; WILL, 2.

1. Where a fund is given to several persons with a direction to distribute it among a number of beneficiaries, the acceptance of the fund constitutes an engagement to distribute it in accordance with the terms of the gift. This engagement may be enforced against the fundholders by a proceeding on the part of an individual beneficiary to recover his share. *Peel v. Board of Police*, 98.

2. Though the beneficiaries in this case were policemen, and the Board of Police held the fund, and though the policemen had no right to receive a present without the consent of the Board, yet the acceptance of the fund from the donor warranted the presumption that the Board consented to its payment. *Id.*

3. When trust for maintenance and education of children during minority by widow, determined by her death. *Fitzpatrick's Appeal*, 192.

4. When trustee loaning at $4\frac{1}{2}$ per cent. not liable for a greater rate of interest. *Graver's Appeal*, 383.

5. Costs of audit will not be imposed on a trustee acting faithfully and prudently. *Id.*

6. When an agent buying property becomes a trustee for his principal. *Eshleman v. Lewis*, 247.

7. Rights of principal, in such case. *Id.*

8. Title of a subsequent purchaser, without notice. *Id.*

UNITED STATES. See GOVERNMENT.**UNITED STATES NOTES AND LOANS.** See CONSTITUTIONAL LAW, I. ; TAXATION, 4.**USURY.** See BILLS AND NOTES, 26 ; CONTRACT, 27 ; HUSBAND AND WIFE, 26.

Where the agent of the lender bargains for and obtains excess of interest for his own use and benefit alone, but with the knowledge of the principal, per JOHNSON, P. J., and J. C. SMITH, J., the usury affects the whole transaction and the principal is liable for it ; per E. D. SMITH, J., the principal should not be liable unless the bonus or excess given to the agent was made a condition of the loan. *Porter v. Mount*, 292.

VENDOR AND VENDEE. See CONTRACT, 23, 24.**I. Of Real Estate.**

1. Vendor afterwards acquiring fee, holds it in trust for his vendee—or vendee's mortgagee. *Clarke v. Martin*, 255.

2. Purchase of outstanding title by vendee in possession enures to vendor's benefit—vendee will be allowed costs of purchase. *Ash v. Hohler*, 448.

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3. Vendor's lien rests upon intention of the parties. What is deemed a waiver thereof. *Cowls v. Varnum*, 448.

4. Purchase from vendee at foreclosure sale acquires mortgagor's title had before giving mortgage. *Butler v. Viele*, 512.

5. Registry of deed no avail when purchaser had notice of prior unregistered deed. *Id.*

6. Purchaser bound to notice rights of party in possession. *Merithew v. Andrews*, 512.

7. When purchaser bound to respect rights of third party. *Id.*

8. Vendee's duty upon receiving notice of rescission of agreement on default of payment. *Tibbs v. Morris*, 384.

9. The usual covenants inserted in a conveyance. *Wilson v. Wood*, 64.

II. *Of Chattels.* See DAMAGES, 9-12; WARRANTY.

10. Purchaser may recover back price, when failure to deliver caused by vendor's omission to properly direct the carrier. *Finn v. Clark*, 574.

11. Payment in counterfeit money does not divest owner's title, except as against subsequent bona fide purchaser for value. *Green v. Humphrey*, 383.

12. Good faith of vendee, for the jury. *Id.*

13. Purchaser not bound to set up breach of warranty in set-off to price of goods. May have action against vendor therefor. *Barth v. Burt*, 256.

VERDICT. See CRIMINAL LAW, 2; TRIAL, 2.

VESSEL. See EXECUTION, 15; SHIPPING.

VOLUNTARY SERVICES. See ASSUMPSIT, 1-4.

WAGES. See CONTRACT, 25; EXECUTION, 2; JUSTICE OF THE PEACE, 2.

WARRANTY. See BILLS AND NOTES, 15-17, 31; DAMAGES, 10; INSURANCE, 4; SURETY; VENDOR AND VENDEE, 13.

1. Bill of sale of "horse, sound and kind," is a warranty of soundness. *Brown v. Bigelow*, 575.

2. Purchaser's knowledge of lameness in such case. *Id.*

WATERS AND WATERCOURSES. See MUNICIPAL CORPORATION, 8.

Owner may improve land, though may drain or alter course of surface water, to another's loss. *Gannon v. Hargadon*, 384.

WAY. See DEED, 5; LANDLORD AND TENANT, 1, 2; MUNICIPAL CORPORATION, 5-7.

Grant of in a deed—construction. Whether way left open is such as deed conveys, for the jury. *Walker v. Pierce*, 767.

WHARF. See NEGLIGENCE, 23.

WHITE CITIZENS. See CONSTITUTIONAL LAW, 22.

WILL. See ILLEGITIMATES, 2; LEGACY.

I. *Execution.* See WITNESS, 4.

1. Proof of execution, when subscribing witnesses do not recollect circumstances thereof. *Eliot v. Eliot*, 575.

2. Executor, accepting trust, is competent subscribing witness to will, under Stats. of Mass. *Wyman v. Symmes*, 575.

3. A disinherited heir at law is a competent witness in support of will. *Sparhawk v. Sparhawk*, 576.

II. *Construction.*

4. A testator, having given to his nieces a life interest in his residuary estate, directed that, "in case all their children should die either in their lifetimes, or after their decease, under age, and without lawful issue," then his trustees should "pay, assign, and transfer" the shares of such nieces equally amongst all his nephews and nieces who should be living at such time or times, and "to the issue of such of them as may be then dead (such issue to be entitled to its parent's share only)." He further directed, that such benefit of survivorship should not, as to a part of the funds given, operate in the case of one of the nieces, but that her share should be paid in the same

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manner as he had directed with respect to a legacy to his niece E. G., "in case of her decease without issue, or their all dying under age, and without issue." The direction with respect to the legacy to E. G. was expressed in the same terms as those used in the gift to the nieces generally, without express mention of death without issue. M. B., one of the nieces, died unmarried, with respect to her share: *Held*,

1st. That there was sufficient indication of intention that the gift over should take effect.

2dly. That "issue" meant children.

3dly. That the gift to issue of deceased nephews and nieces was original, not substitutionary.

4thly. That, whether original or substitutionary, such issue need not survive the tenant for life in order to entitle them to take.

5thly. Nor need they have survived their parents, the gift being original; *secus*, if it had been substitutionary.

6thly. The gift to the issue was in joint tenancy. *Lanphier v. Buck*, 224.

5. A testator bequeathed 500*l.* upon trust for his daughter for life, and directed that if she should die without issue (which event happened) the fund should be paid to his four sons, share and share alike, but in case any or either of his sons should be then dead, he directed that the share of him or them so being dead should be paid to his or their child or children, share and share alike, but if there should be no child, then to his or their legal personal representatives: *Held*, that the gift to the son's children was substitutionary, and, therefore, that such children as did not survive their parents were excluded from the terms of the gift, though it was not necessary that such children should survive the tenant for life. *Re Turner*, 234.

6. *Held*, also, that no exception could be made in the present case to the general rule, that the term "legal personal representatives" must be construed as "executors and administrators." *Id.*

7. "Heirs" in a devise, word of limitation. *Allen v. Henderson*, 256.

8. Words creating an estate tail. *Id.*

9. Grant of income passes whole estate. *Id.*

10. Bequest in trust for charitable purpose, the interest to accumulate for fifty years, is valid even if the accumulation cannot be allowed so long. *Odell v. Odell*, 384.

11. Devise void as infringing rule against perpetuities. *Wood v. Griffin*, 703.

WITNESS. See ERROR, 2; EVIDENCE, 8, 9, 12, 15, 25, 27; FOREIGN ATTACHMENT, 2; GOVERNMENT, 5, 6; SHERIFF, 1; WILL, 1-3.

1. TESTIMONY OF DEFENDANTS IN CRIMINAL PROSECUTIONS, 129, 705.

2. Where a party is called by the other side as a witness on the trial of a case, the objection to his competency is removed for all purposes, and he may be called at a subsequent period in the same trial as a witness in his own behalf. *Seiss v. Storch*, 536.

3. If insane party be competent to testify, other party may be admitted under Gen. Stats. Mass. c. 131. *Kendall v. May*, 319.

4. To a will must be competent at the time of attestation. *Frink v. Pond*, 704.

5. Contra as to witnesses to a deed. *Id.*

6. Jurors are competent. *Hauser v. Com.*, 668.

7. Wife, competent witness in her own behalf in action against husband and wife for personal tort committed by wife alone. *Hooper v. Hooper*, 64.

8. Married woman party to action with husband, may be examined as a witness in her own behalf, in N. Y. *Id.*

9. Opinions not of experts sometimes admissible from necessity. *Whittier v. Franklin*, 704.

10. Opinion as to conduct of a horse at the time of an accident, admitted. *Id.*